

EXHIBITS TO PETITION.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. _____, Original.

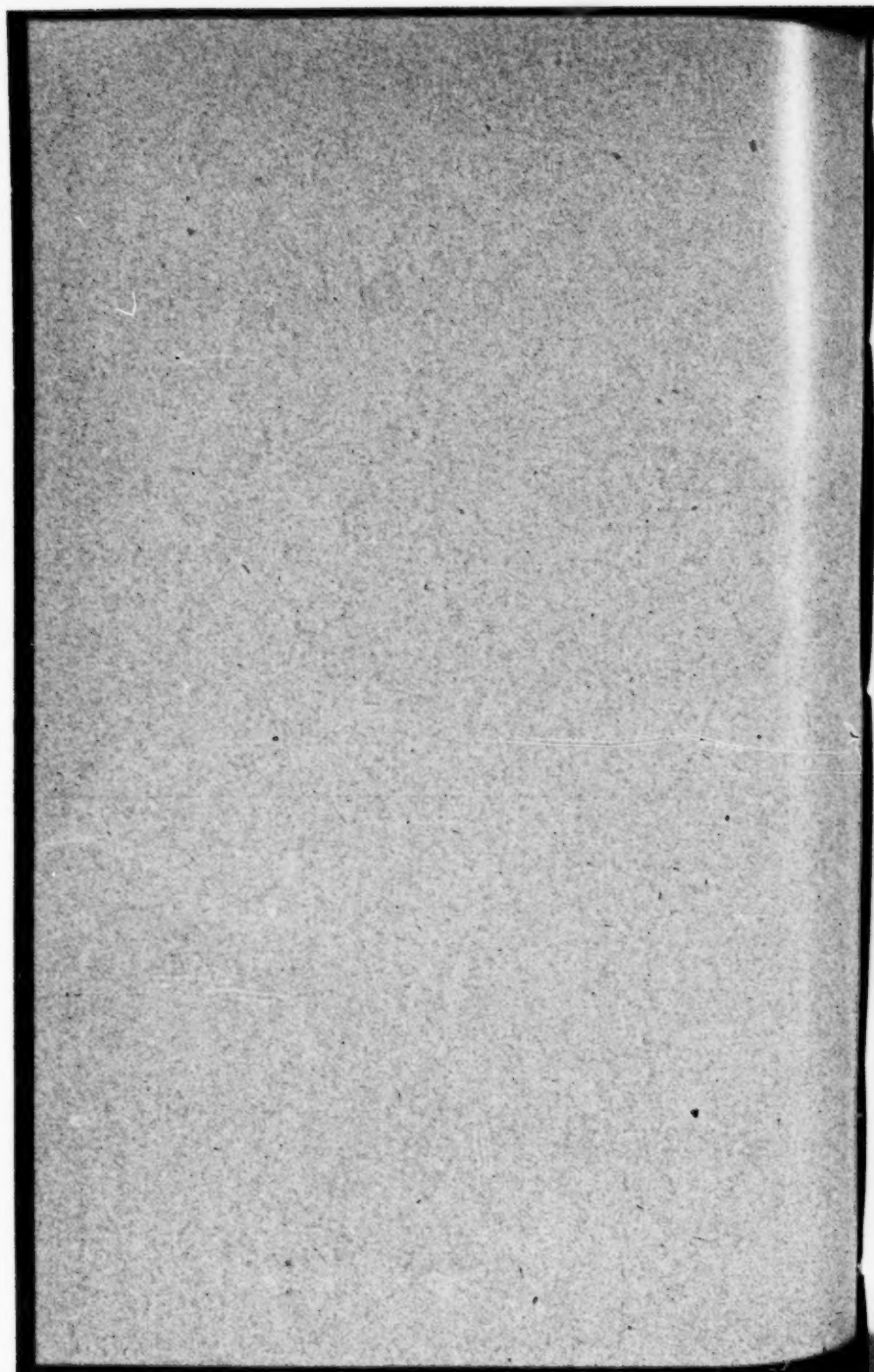
TAMPA SUBURBAN RAILROAD COMPANY, A CORPORATION,
PETITIONER,

vs.

CENTRAL TRUST COMPANY OF NEW YORK, A CORPORATION,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI.

Extracts from the Transcript of Record in Case of
Central Trust Company of New York, Complainant,
vs. Consumers' Electric Light and Street Railroad
Company and Tampa Suburban Railroad Company,
Defendants.



INDEX.

	Original.	Print.
Exhibit 1 to Petition—Original bill and Exhibit A.....	1-38	1
Exhibit 2 to Petition—Order granting injunction.....	39, 40	24, 25
Exhibit 3 to Petition—Notice of application for receiver....	45	25, 26
Exhibit 4 to Petition—Objections of Tampa Suburban R. R. Co. to hearing outside of fifth circuit	47, 48	26, 27
Exhibit 5 to Petition—Objection of Tampa Suburban R. R. Co. to continuance of hearing	104, 105	27, 28
Exhibit 6 to Petition—Order appointing receiver.....	198-201	28-30
Exhibit 7 to Petition—Letter of Pardee, C. J.....	207	31
Exhibit 8 to Petition—Affidavits attached to motions filed in circuit court by Tampa Suburban R. R. Co.	233-236	31-33

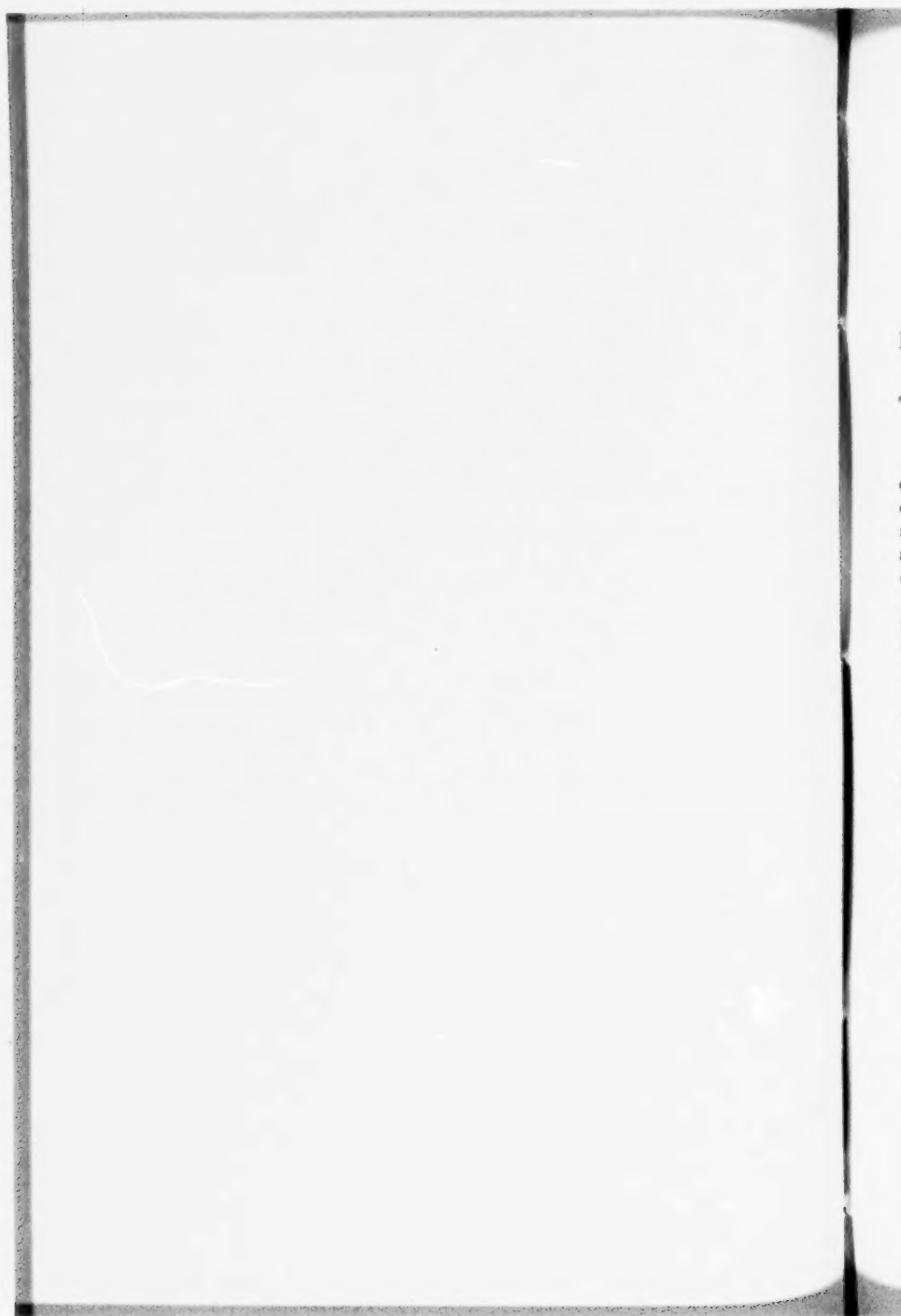


EXHIBIT 1 TO PETITION.

ORIGINAL BILL AND EXHIBIT A.

In the Circuit Court of the United States for the Southern District of Florida.

To the honorable the judges of the circuit court of the United States for the southern district of Florida, sitting in equity :

Central Trust Company of New York, a corporation created and existing under the laws of the State of New York and a resident and citizen of the State of New York, brings this its bill of complaint against the Consumers' Electric Light and Street Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Florida and a resident and citizen of the State of Florida and an inhabitant of the southern district of Florida, and against the Tampa Suburban Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Florida and a resident and citizen of the State of Florida and an inhabitant of the southern district of Florida ; and thereupon your orator complains and says :

First. On and prior to the first day of July, 1895, the Consumers' Electric Light and Street Railroad Company (hereinafter styled the Consumers' Company) was and it still is a corporation duly created and existing under the laws of the State of Florida, and was and is a resident and citizen of the State of Florida and an inhabitant of the southern district of Florida, and was and is fully authorized and empowered to execute and deliver the bonds and mortgage hereinafter mentioned. The defendant The Tampa Suburban Railroad Company is a corporation duly created and organized and existing under the laws of the State of Florida and a resident and citizen of said State of Florida and an inhabitant of the southern district of Florida.

Second. Your orator, Central Trust Company of New York, was at the times hereinafter mentioned and now is a corporation created and existing under the laws of the State of New York and bearing the corporate name of the Central Trust Company of New York, and at all the times hereinafter mentioned it was and now is duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred and conveyed to it in trust, as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgage or deed of trust hereinafter described.

Third. On or about the first day of July, 1895, the defendant Consumers' Company, for the purpose of taking up and replacing

certain of its bonds then outstanding and of enlarging and improving its plant and property, resolved and determined to issue its bonds to the amount of \$350,000 of principal, par value, consisting of 350 bonds numbered consecutively from one upwards, and to secure the same by executing and delivering to your orator, as trustee, a mortgage or deed of trust conveying to your orator, as trustee for the holders of said bonds, all the property, franchises, privileges, immunities, and possessions, real and personal, present or expectant, of said Consumers' Company then held or thereafter to be acquired by it and used, exercised, or enjoyed for or in connection with the maintenance and operation of the railroad plant and business of the said Consumers' Company. In pursuance of the resolution and determination above mentioned and in the exercise of its lawful corporate powers and due corporate action having first been had, the said Consumers' Company made and executed said 350 bonds amounting to \$350,000 of principal, par value, by each of which bonds it acknowledged itself indebted unto your orator or bearer in the sum of \$1,000, which it promised to pay to the bearer thereof or to the registered owner, in case the bond be registered, on the first day of July, 1895, at its office or agency in the city of New York, free from all United States taxes and in gold coin of the United States of America of or equivalent to the present standard of weight and fineness, with interest from July first, 1895, at the rate of six per cent. per annum, payable semi-annually in like gold coin free from the said taxes, at its said office or agency in the city of New York, on the first days of January and July in each year, on the presentation and surrender of the annexed coupons as they severally should become due.

Fourth. On or about said 1st day of July, 1895, said Consumers' Company, in pursuance of the resolution and determination above mentioned and in the due exercise of its corporate powers and due corporate action having first been had, in order to secure the payment of the said bonds and the interest to accrue thereon, made, executed, and delivered unto your orator its certain mortgage or deed of trust bearing date July 1st, 1895, and therein and thereby granted, bargained, sold, assigned, released, conveyed, and confirmed unto your orator, its successors and assigns, certain property described in said mortgage as follows (the word "mortgagor" in said description meaning said defendant, Consumers' Company):

"All and singular the real and personal property, corporate rights and franchises, leases, contracts, privileges, and appurtenances of the said mortgagor, including its entire electric plant, buildings, dynamos, engines, boilers, belting, machinery, poles, wire, water power, tools, lamps, supplies, rolling stock, equipment, cars, motors, locomotives, and property of every description, kind, and character now owned or hereafter to be acquired by said mortgagor, including all the rights acquired by it under a certain lease for the term of ninety-nine years, made or to be made by the Tampa Suburban Railroad Company to said mortgagor upon its franchises, rights of way, roadbeds, track, and its real and personal property of every description in said lease described, and also including all the following pieces,

parcels, or tracts of land situate, lying, and being in the county of Hillsborough, State of Florida, known and described as follows, to wit:

The west half of the northeast quarter of section twenty-eight (28), township twenty-eight (28) south, range nineteen (19) east, less two acres in the northeast corner, bounded and described as follows:

Beginning at the northeast corner of the said west half of the northeast quarter and running west two chains, thence south ten chains, thence east two chains to the eastern boundary of said west half of the northeast quarter, and thence north ten chains to the point of beginning; also the northeast quarter of the northeast quarter of said section, township and range above specified, less ten acres in the northwest corner, bounded and described as follows:

Beginning at the northeast corner of said forty-acre tract, running thence east ten chains, thence south ten chains, thence west ten chains, thence north along the western boundary of said forty-acre tract ten chains to the point of beginning; also the north half of the southeast quarter of the northeast quarter of said section, township and range above specified, and containing, all told, one hundred and twenty-eight acres, more or less.

Also the southeast quarter of the southwest quarter and the south half of the southeast quarter of section twenty-nine (29), the south half of the northeast quarter, the east half of the southwest quarter and the southeast quarter of section thirty-one (31), the north half of the northeast quarter, the northeast quarter of the southwest quarter, and the northwest quarter of section thirty-two (32); all in township twenty-seven (27) south of range twenty (20) east, and containing seven hundred and sixty (760) acres, more or less.

Also lots seven (7) and eight (8) of Linebaugh's subdivision of the city of Tampa, according to the plat thereof duly recorded in the office of the clerk of the circuit court in and for said Hillsborough county, in plat No. 1, on page 59.

Together with all and singular the rights, easements, tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and together with all other property, real, personal, and mixed, corporal and incorporeal, of the said mortgagor in any manner whatever."

To have and to hold, receive, and take all and singular the real and personal estate and premises, with the tenements, hereditaments, and appurtenances thereunto appertaining, and the corporate rights and privileges thereby granted, assigned, and conveyed or intended so to be unto and for the only proper use, benefit, and behoof of your orator, its successors and assigns forever; in trust nevertheless for the equal *pro rata* benefit and security of the holders of said bonds and for and upon the uses, purposes, and trusts in said mortgage set forth and declared.

Fifth. The said mortgage or deed of trust was authorized, made, executed, and delivered in all respects in conformity with law, and was duly recorded in the office of the clerk of the circuit court in and for the county of Hillsborough, State of Florida, September

28th, 1895, in Book A of Mortgages, at page 296. Your orator duly accepted the trust created in and by said mortgage or deed of trust before the recording of the same as aforesaid. Your orator refers to the said mortgage so recorded and to a true copy thereof annexed to this bill of complaint as part thereof, marked Exhibit A, for a particular statement of the terms and provisions of said mortgage or deed of trust and of the bonds issued thereunder, and your orator prays that said copy of said mortgage or deed of trust, marked Exhibit A, may be taken in all respects as if it had been fully set forth in the body of this bill.

Sixth. The said bonds to the aggregate amount of \$350,000, so made and executed as aforesaid, were duly authenticated by the endorsement thereon of the certificate of your orator, as provided in said bonds and mortgage, and so authenticated were duly delivered by your orator in all respects in accordance with the provisions of said mortgage or deed of trust, \$200,000, par value thereof, having been delivered by your orator only upon production of due and satisfactory proof of the payment and cancellation of certain first-mortgage bonds bearing date July 1st, 1893, described in said mortgage, amounting in the aggregate to \$200,000 of principal, par value; the other 150 of said bonds, amounting to \$150,000 of principal, par value, were delivered only upon certificates and resolutions of the board of directors of said company and demand of the president of said company, as specified in said mortgage or deed of trust. Your orator is informed and verily believes that all of said bonds, amounting to \$350,000 of principal, par value, have been duly issued, negotiated, and sold to divers persons who have thereby become *bona fide* holders thereof as purchasers of the same for value, and are now outstanding and valid and binding obligations of said Consumers' Company.

Seventh. Subsequent to the execution and delivery of said mortgage a suit was brought by the defendant The Consumers' Company against your orator, in the circuit court of the sixth judicial circuit of the State of Florida in and for Hillsborough county, to rectify and reform said mortgage because of a mistake in the description of the land conveyed, and such proceedings were had in said action that a decree was rendered therein on December 22nd, 1896, rectifying and reforming the description of the lands mentioned in said mortgage by striking out therefrom the words "Also the southeast quarter of the southwest quarter and the south half of the southeast quarter of section twenty-nine (29); the south half of the northeast quarter, the east half of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-one (31); the north half of the northeast quarter, the northeast quarter of the southwest quarter, and the northwest quarter of section thirty-two (32); all in township twenty-seven (27) south of range twenty (20) east and containing seven hundred and sixty (760) acres, more or less," and by reason thereof the portion of the lands mentioned in said mortgage, which is above described, is no longer included in said mortgage or subject to the lien thereof.

Eighth. The said Consumers' Company made default in payment

on the first day of July, 1897, of the installment of interest due on that day on all of said bonds issued and outstanding as aforesaid and secured by said mortgage to your orator, and the said default still continues.

Your orator is informed and believes that demand was duly made on the said Consumers' Company for the payment of the said installment of interest due upon the said bonds July 1st, 1897, as aforesaid, but that payment of said installment of interest and the coupons representing the same was refused, and that neither on said 1st day of July, 1897, nor at any time since did said Consumers' Company or any one else have or provide at the office or agency of said company in the city of New York or elsewhere any funds with which to pay said instalment of interest or any part thereof; and your orator alleges that no part of said instalment of interest has been paid by said Consumers' Company or by any other person or corporation, but that the whole of said instalment of interest remains due and unpaid, and that thereby default has been made in the performance of the terms and conditions of said mortgage or deed of trust by said defendant, Consumers' Company.

Ninth. Your orator is informed and believes that the defendant Consumers' Company is insolvent and wholly unable to pay its debts and obligations, and that the property and premises covered by the said mortgage are of a value less in amount than the amount of the bonds issued thereunder, and that said mortgaged property and premises are and constitute an inadequate security for the payment of said bonds.

Your orator further shows that the financial affairs of both the defendant companies are embarrassed; that there are troubles in the administration of the affairs of the same and conflict between those interested in the affairs and management of the property, and that your orator as trustee under said mortgage cannot execute or perform the trusts provided in and by said mortgage or protect the rights of the holders of the bonds secured thereby without the aid or interposition of this honorable court, sitting in equity, and without a judicial sale of the mortgaged premises, franchises, and appurtenances, and that until such sale can be had and the proceeds thereof distributed it is expedient and necessary that all the said mortgaged property of every nature and description whatsoever should be placed in the possession and under the control of a receiver or receivers, to be appointed by this honorable court, with such proper power and control over the same as to this court shall seem just.

Your orator is informed and believes that the mortgaged property constitutes and forms one plant for the running of an electric railroad and furnishing electricity to the inhabitants of Tampa, and that it is for the interest of all parties that it should be sold as an entirety, and that the value of it in portions and sections is and will be much less than its value as a whole, and that the mortgaged premises are so situated that the same cannot be sold in separate parcels without great and irreparable loss and sacrifice.

Tenth. Your orator further alleges that there is due and owing

from said defendant, Consumers' Company, to your orator or the holders and owners of said bonds the sum of \$10,500, with interest from July 1st, 1897.

Your orator is informed and believes that the defendant The Tampa Suburban Railroad Company has or claims to have some interest in the mortgaged premises as lessee or otherwise, but that such interest, if any, has accrued subsequent to the making of said mortgage to your orator and is in all respects subject and subordinate thereto.

Your orator is informed and believes that no proceedings have been had at law or in equity for the collection of the debt secured by said mortgage or any part thereof save only this suit.

Your orator has been requested by the holders of a majority in amount of said bonds issued under and secured by said mortgage to institute proceedings for the foreclosure of said mortgage and to bring this suit.

Your orator therefore, in view of the premises, seeks the aid of this honorable court in equity, wherein only adequate relief can be administered in matters of this nature, and prays as follows:

1. That the said mortgage dated July 1st, 1895, be foreclosed.
2. That the lien of said mortgage may be decreed and established as a first lien upon the property covered thereby and hereinbefore mentioned and described, and that the amount due and to become due for principal and interest upon the said bonds outstanding and secured by said mortgage may be ascertained and determined.
3. That in default of the payment of the sum so found due within a time to be limited by the decree of this honorable court, it may be decreed that the defendants and all persons claiming under them or either of them any interest in said mortgaged property as aforesaid subsequent to the lien of said mortgage be absolutely barred and foreclosed of and from all right or equity of redemption of, in, and to said mortgaged premises or any part thereof, and that a sale of the whole of the mortgaged property and premises be ordered in accordance with law and the practice of this honorable court, and that the proceeds may be applied to the expenses of this suit and to the payment of the amounts found due as aforesaid, and the balance thereof as the court may direct.
4. That if the proceeds of said sale shall be insufficient to pay the amounts due upon said bonds for principal and interest, the defendant Consumers' Company be adjudged to be liable to pay and be required to pay the amount of such deficiency to your orator or to the owners and holders of said bonds and coupons.
5. That a receiver or receivers be appointed to take possession of the property of the defendant Consumers' Company covered by said mortgage and of the earnings and proceeds thereof, with power to operate the said property and use the same, and with all such power and authority as may be requisite to preserve the same until the sale thereof, as the same may be decreed and ordered by this honorable court, and to secure the earnings of the said property to the use of the bondholders, and with such other powers and authority

as are usually possessed by receivers in like cases as this court may direct.

6. That the defendants and each of them, their officers, directors, and all other persons claiming or pretending to claim under them, may be restrained by injunction of this honorable court from interfering with or disposing of said mortgaged premises, property, and franchises or any part thereof or any earnings or proceeds thereof.

7. That the defendants herein may answer all and singular the premises, but not under oath, which is hereby expressly waived.

8. That your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and to your honors seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, to be issued to the said The Consumers' Electric Light & and Street Railroad Company and The Tampa Suburban Railroad Company, but also a writ of subpoena to be directed to the said The Consumers' Electric Light and Street Railroad Company and The Tampa Suburban Railroad Company, commanding them and each of them, at a certain time and under a certain penalty to be therein specified, to be and appear before this honorable court, then and there to answer the premises and to abide by the order and decree of the court herein, and that said corporations may appear herein according to law.

(Signed)

CENTRAL TRUST COMPANY
OF NEW YORK,

[CORPORATE SEAL.]

By G. SHERMAN, *Vice-President.*

BUTLER NOTMAN,

JOLINE & MYNDERSE,

Solicitors for Complainant.

ADRIAN H. JOLINE, *Of Counsel.*

STATE, CITY, AND COUNTY OF NEW YORK, }
Southern District of New York, } ss :

George Sherman, being duly sworn, deposes and says that he is an officer, to wit, vice-president, of The Central Trust Company of New York, the complainant in this suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the seal affixed to the said bill of complaint is the corporate seal of said complainant and was thereunto affixed by due and proper authority.

(Signed)

G. SHERMAN.

Sworn to before me this 21st day of July, 1897.

(Signed)

[NOTARIAL SEAL.]

CHAS. FLYNN,

Notary Public, N. Y. Co.

EXHIBIT A.**THE CONSUMERS' ELECTRIC LIGHT AND STREET
RAILROAD COMPANY.****FIRST MORTGAGE.**

This indenture made the first day of July in the year one thousand eight hundred and ninety-five, between

The Consumers' Electric Light & Street Railroad Company, a corporation organized and existing under the laws of the State of Florida, hereinafter called the company or the mortgagor, party of the first part, and

The Central Trust Company of New York, hereinafter called the trustee, party of the second part.

Whereas, heretofore on the 7th day of June in the year one thousand eight hundred and ninety-three, the said mortgagor, pursuant to the authority of its stockholders, as declared in resolutions adopted by said stockholders at a meeting held at Tampa, Florida, on the 8th day of February, 1893; and pursuant to the authority granted at a certain other meeting of the stockholders of said mortgagor held at Tampa, Florida, on the 23d day of February, 1893; and pursuant to the authority granted at a meeting of the board of directors of said mortgagor held at Tampa, Florida, on the 23d day of February, 1893; executed a certain mortgage or deed of trust to the trustee herein named, which said mortgage or deed of trust granted, bargained and sold to said trustee all the real and personal property, corporate rights and franchises of the said mortgagor, and which said mortgage was given to secure the payment of an issue of first-mortgage bonds to the amount of \$200,000.00, the principal of said bonds being payable in gold coin on the first day of July, 1913, and bearing interest at the rate of six per cent. per annum, payable in gold coin semi-annually on the first days of January and July in each year, and

Whereas, at a meeting of the stockholders of said mortgagor held at the office of the company in the city of Tampa, State of Florida, on the 28th day of March, 1895, there being present at said meeting the owners of more than three-fourths of the stock of the said mortgagor, a resolution was adopted, the votes of more than three-fourths of the stock of the said mortgagor being recorded in favor thereof, by the terms of which resolution it was declared that section six of the articles of incorporation of the said mortgagor be amended so as to read as follows:

"The highest amount of indebtedness or liability to which the corporation can at any time subject itself shall be \$350,000.00," and

Whereas, at said meeting of said stockholders it was further resolved that the board of directors of the mortgagor be empowered to issue bonds to the amount of \$300,000, for the following purposes:—namely, \$200,000 thereof to take up and replace the said outstanding bonds of the mortgagor and the remaining \$100,000 to be used for betterments and improvements, and

Whereas, pursuant to law, the State of Florida has granted unto the said mortgagor full authority to exercise its powers and privileges as a corporation under and in accordance with its charter as amended as aforesaid, such grant of authority being set forth in certain letters patent issued under the great seal of the State in the form and manner following, to wit:—

Letters Patent, State of Florida.

To all whom the presents shall come, Greeting:

Whereas, it appears that the Consumers' Electric Light and Street Railroad Company, a corporation existing under the laws of Florida, by a vote of three-fourths of all its stock at a meeting held for that purpose on the 28th day of March, A. D., 1895, duly called as provided by law, adopted a proposed amendment of its charter as follows:

Resolved, That section six of the charter of the Consumers' Electric Light and Street Railroad Company be amended so as to read as follows:

SECTION 6. The highest amount of indebtedness or liability to which the corporation can at any time subject itself shall be three hundred and fifty thousand (\$350,000) dollars.

And whereas, a certificate under the common seal of said corporation, of the said proposed amendment, adopted as aforesaid, was duly filed in the office of the secretary of state, and due notice and publication thereof has been made in proper form, and it appearing that the proposed amendment will be beneficial and lawful and not injurious to the community and is in accord with the purposes of the charter, the same is therefore approved.

Whereupon the State of Florida hereby grants unto the said Consumers' Electric Light and Street Railroad Company, full authority to exercise the powers and privileges of such corporation under and in accordance with its charter as amended as aforesaid.

In witness whereof, these presents have been attested with the great seal, and countersigned by the governor and secretary of the State of Florida, at Tallahassee, the capital, this 6th day of May, A. D. 1895.

H. L. MITCHELL, *Governor.*

JOHN L. CRAWFORD,
Secretary of State.

STATE OF FLORIDA, }
 County of Hillsborough. }

Be it remembered, that on the 8th day of May, A. D. 1895, the annexed instrument of writing was presented and filed for record with the subscriber, clerk of the circuit court for said county, and the same being properly authenticated, I have duly recorded the same in Book No. 1 of Incpts. on page 184.

Witness, Charles Wright, clerk, and the seal of our said court, at Tampa, Florida, this 20th day of May, 1895.

CHAS. WRIGHT, *Clerk*,
 By D. B. GIVENS, *D. C.*

And whereas, on the 24th day of June, 1895, at a meeting of the stockholders of the company, held in the city of Tampa, State of Florida, there being present owners of more than three-fourths of the stock of said company, resolutions were adopted, the votes of more than three-fourths of the stock of said company being recorded in favor thereof, in the words and manner following, to wit:—

Whereas, at a meeting of the stockholders of this company, held at the office of the company in the city of Tampa, State of Florida, on the 26th day of March, 1895, there being present at said meeting owners of more than three-fourths of the said company, a resolution was adopted, the votes of more than three-fourths of the stock of the said company being recorded in favor thereof, by the terms of which resolution it was declared that section six of the articles of incorporation of this company be amended so as to read as follows:—

“The highest amount of indebtedness or liability to which the corporation can, at any time, subject itself shall be \$350,000,” and,

Whereas, pursuant to law the State of Florida has granted unto this company full authority to exercise its powers and privileges as a corporation under and in accordance with its charter as amended as aforesaid. Such grant of authority being set forth in certain letters patent issued under the great seal of the State, and

Whereas, at said meeting of the stockholders certain other resolutions were adopted empowering the directors to issue bonds to the amount of \$300,000.00, for certain purposes stated in said resolutions, and

Whereas, said last-named resolution does not express the actual intent of the company in proper form, now, therefore, be it:—

Resolved, That the said last-named resolution authorizing an issue of bonds to the amount of \$300,000.00, be and the same is hereby rescinded and cancelled, in order that it may be re-enacted as hereinafter set forth; and be it further

Resolved, That the board of directors be and they are hereby empowered to direct an issue of a series of bonds to the amount of \$350,000.00, in sums of \$1,000.00, each, numbered from one upwards consecutively, under the corporate seal of the company, to be signed by the president and attested by the secretary of the company; and be it further

Resolved, That of the said \$350,000.00 bonds, \$200,000.00 thereof

shall be devoted to the purpose of taking up and replacing the outstanding bonds of this company hereinbefore issued, and the remaining \$150,000.00 thereof shall be devoted by the said directors to the purpose of enlarging and improving the company's plant and property by making betterments and in such other ways as may seem best to the said board of directors; and it is further

Resolved, That to secure the payment of the principal and interest of all of said bonds equally and rateably to the holders thereof without preference or discrimination, the said board of directors is hereby authorized to cause the proper officers of this company to execute and deliver to the Central Trust Company of New York, as trustee, a mortgage or deed of trust conveying to said trust company as trustee for the holders of said bonds all the property, franchises, privileges, immunities and possessions, real and personal, present or expectant, of said company now held or hereafter to be acquired by it, and used, exercised or enjoyed, or intended to be used, exercised or enjoyed for or in connection with the maintenance and operation of the railroad, plant, and business of the said company, and

Whereas, at a meeting of the board of directors of the said company held at the office of the company in the city of Tampa, State of Florida, on the 24th day of June, 1895, a resolution was duly passed in the following form, to wit:

Whereas, at a meeting of the stockholders of the company, held in the office of the company in the city of Tampa, State of Florida, at eleven o'clock in the forenoon on this, the 24th day of June, A. D. 1895, there being present at said meeting owners of more than three-fourths of the stock of said company, the stockholders voted unanimously empowering the board of directors to direct an issue of a series of bonds to the amount of three hundred and fifty thousand dollars (\$350,000.00) in the sum of one thousand dollars (\$1,000.00) each, numbered from one upwards consecutively under the corporate seal of the company to be signed by the president and attested by the secretary of the company, be it:

Resolved, That the president and secretary of this company be, and they are hereby authorized to sign and attest the issue of bonds of this company in the sum of three hundred and fifty thousand dollars (\$350,000.00) as provided in the foregoing resolutions of the stockholders, and it is further

Resolved, That the president and secretary of this company be, and are hereby authorized to execute and deliver to the Central Trust Company of New York, as trustee, a mortgage or deed of trust, conveying to said trust company as trustee for the holders of said bonds, all the property, franchises, privileges, immunities and possessions, real and personal, present or expectant, of said company, now held or hereafter to be acquired by it, and used, exercised or enjoyed, or intended to be used, exercised or enjoyed, for or in connection with the maintenance and operation of the railroad, plant and business of the said company, and,

Whereas, the said Consumers' Electric Light and Street Railroad Company hath in accordance with the said resolution and authority

prepared and executed bonds to be issued and used at the rate and for the purpose hereinbefore mentioned and set forth; and

Whereas, the bonds so proposed to be issued and negotiated by the said party of the first part, and the coupons or interest warrants accompanying the same, and the trustee's certificate to be endorsed upon the said bonds are substantially in the following form, that is to say:

UNITED STATES OF AMERICA, *State of Florida.*

No. —.

\$1,000.00.

The Consumers' Electric Light and Street Railroad Company of Tampa, Florida.

First-Mortgage Fifty-Year Six Per Cent. Gold Bond.

The Consumers' Electric Light and Street Railroad Company acknowledges itself indebted unto the Central Trust Company of New York, or bearer in the sum of one thousand dollars, which it promises to pay to the bearer hereof (or to the registered owner in case this bond is registered) on the first day of July, one thousand nine hundred and forty-five, at its office or agency in the city of New York, free from all United States taxes, and in the gold coin of the United States of America of, or equivalent to the present standard of weight and fineness, with interest from July first, eighteen hundred and ninety-five, at the rate of six per centum per annum payable semi-annually in the like gold coin, free from the said taxes, at its said office or agency in the city of New York, on the first days of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due. In case of default in the payment of any installment of interest according to the tenor and effect of this bond, and of the coupons representing such installment, such default continuing for the period of sixty days after demand of payment the principal of the bond may become immediately due and payable, in the manner and with the effect specified in the mortgage or deed of trust hereinafter mentioned. This bond is one of a series of three hundred and fifty bonds of like tenor, amount and date, numbered consecutively from number one upwards, and issued as particularly mentioned in said mortgage or deed of trust. The payment of the whole series of the said bonds with the interest thereon being equally secured by a mortgage or deed of trust, of even date herewith, duly recorded, conveying unto the Central Trust Company of New York, as trustee, all and singular the real and personal property, corporate rights and franchises, leases, contracts, privileges and appurtenances, of the said mortgagor, including its entire electric plant, buildings, dynamos, engines, boilers, belting, machinery, poles, wire, water power, tools, lamps, supplies, rolling stock, equipment, cars, motors, locomotives, and property of every description, kind and character now owned or hereafter to be acquired by said mortgagor, its successors or assigns, including all the rights acquired by it under a certain lease for the term of ninety-nine years made by the Tampa Suburban

Railroad Company to said mortgagor upon its franchises, rights of way, road-beds, tracks and its real and personal property of every description in said lease described.

This bond may, at the holder's option, be registered on the books of the company, at the transfer agency in the city of New York, and be made payable only to the registered owner, to be named thereon, but such registration shall not affect the negotiation of the coupons by delivery merely. After such registration this bond may again be made payable to bearer by proper registration, to be noted hereon at the said transfer agency of the company. This bond shall not become obligatory until duly authenticated by the certificate of the trustee endorsed hereon.

In witness whereof, the said Consumers' Electric Light and Street Railroad Company hath caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and attested by its secretary, this first day of July, one thousand eight hundred and ninety-five.

THE CONSUMERS' ELECTRIC LIGHT AND
STREET RAILROAD COMPANY,

By — — —, *President*.

Attest: — — —, *Secretary*.

(*Form of Coupon.*)

\$30.

Coupon No. —.

The Consumers' Electric Light and Street Railroad Company of Tampa, Florida, will pay to bearer at its office, or agency in the city of New York, thirty dollars on the first day of —, 189—, being six months' interest on its first-mortgage bond No. —.

— — —, *Secretary*.

(*Form of Trustee's Certificate Endorsed on Bond.*)

The Central Trust Company, of New York, hereby certifies that the within bond is one of the series described in the within-mentioned mortgage or deed of trust.

CENTRAL TRUST COMPANY, *Trustee*,

By — — —, *President*.

Now, therefore, this indenture witnesseth:

That the said mortgagor, as well in consideration of the premises and the better securing of the payment of the above-described bonds, and the interest to accrue thereon, to the purchasers or holders thereof, as of the sum of one dollar to it paid by the said party of the second part, trustee as aforesaid, at the time of execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, released and confirmed, and by these presents doth grant, bargain, sell, assign, release, convey and confirm unto the said trustee, its successors and assigns, all and singular the real and personal property, corporate rights and franchises, leases, contracts, privileges and appurtenances of the said mortgagor, including its entire electric plant, buildings, dynamos, engines, boilers, belting,

machinery, poles, wire, water power, tools, lamps, supplies, rolling stock, equipment, cars, motors, locomotives, and property of every description, kind and character now owned or hereafter to be acquired by said mortgagor, including all the rights acquired by it under a certain lease for the term of ninety-nine years made or to be made by the Tampa Suburban Railroad Company to said mortgagor upon its franchises, rights of way, road-beds, track and its real and personal property of every description in said lease described; and also including all the following pieces, parcels or tracts of land situate, lying and being in the county of Hillsborough, State of Florida, known and described as follows, to wit:

The west half of the northeast quarter of section twenty-eight (28), township twenty-eight (28) south, range nineteen (19) east less two acres in the northeast corner, bounded and described as follows:

Beginning at the northeast corner of said west half of the northeast quarter and running west two chains, thence south ten chains, thence east two chains to the eastern boundary of said west half of the northeast quarter and thence north ten chains to the point of beginning. Also the northeast quarter of the northeast quarter of said section, township and range above specified, less ten acres in the northwest corner bounded and described as follows:

Beginning at the northeast corner of said forty-acre tract, running thence east ten chains, thence south ten chains, thence west ten chains, thence north along the western boundary of said forty-acre tract, ten chains to the point of beginning. Also the north half of the southeast quarter of the northeast quarter of said section, township and range above specified; and containing all told, one hundred and twenty-eight acres, more or less.

Also the southeast quarter of the southwest quarter and the south half of the southeast quarter of section twenty-nine (29), the south half of the northeast quarter, the east half of the southwest quarter and the southeast quarter of section thirty-one (31); the north half of the northeast quarter, the northeast quarter of the southwest quarter, and the northwest quarter of section thirty-two (32); all in township twenty-seven (27) south of range twenty (20) east, and containing seven hundred and sixty (760) acres, more or less.

Also lots seven (7) and eight (8) of Linebaugh's subdivision of the city of Tampa, according to the plat thereof duly recorded in the office of the clerk of the circuit court in and for said Hillsborough county in plat No. 1 on page 59.

Together with all and singular the rights, easements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, and together with all other property, real, personal and mixed, corporal and incorporeal, of the said mortgagor in any manner whatever.

To have and to hold, receive and take, all and singular the real and personal estate and premises, with the tenements, hereditaments and appurtenances thereunto appertaining, and the corporate rights and privileges hereby granted, assigned, and conveyed, or intended so to be, unto and for the only proper use, benefit and behoof of the

said trustee, its successors and assigns forever. In trust, nevertheless, for the equal *pro rata* benefit and security of all and every the holders of the said bonds hereby secured, for and upon the uses, purposes and trusts herein set forth and declared, that is to say:

Article first. Until default shall be made by the company in the payment of any sum of money hereby secured, or in respect of some covenant, act or thing herein contained and set forth, by it to be kept or done, the company shall be suffered and permitted to possess, manage, operate, use and enjoy the said electric plant and property of every kind and the said railroad, extensions, branches, premises and other property, and the rights, privileges, franchises, exemptions and immunities hereinbefore mentioned, and to take and apply to its own use the tolls, income, revenue, rents, issues and profits thereof, so far as the same can be done without impairing its ability, fully and promptly, to keep and perform all its covenants and agreements herein contained, and the same shall remain the property of the company, subject to this indenture for the security of the payment of said bonds. And whenever the said bonds hereby secured shall have been fully paid, principal and interest, this indenture shall be discharged by the trustee, by appropriate instrument or instruments, duly executed and acknowledged.

Article second. In case default shall be made in the payments of the interest on any of the said bonds secured hereby, or in any covenant or agreement herein contained to be kept or performed by the company, and if any such default shall continue for a period of sixty days, then the trustee may enter into and upon all and singular the said electric plant and property of every kind and the said railroad, extensions and branches, with the appurtenances, and all the property and franchises belonging thereto as such trustee, or as the agent and attorney of the company, and have, hold, use and enjoy the same in as full and ample a manner as the company could if this indenture had not been made, operating by its managers, superintendents or other agents or attorneys, the said electric plant and property and the said railroad, extensions, branches and property, and conducting the business thereof, and exercising the franchises pertaining thereto, and making from time to time all needful repairs, replacements, alterations, improvements and additions therein and thereto, as shall seem to be necessary or judicious; and collecting and receiving all tolls, freights, fares, income, revenue, rents, issues and profits of the same; and after deducting the expenses of operating the said plant and property and the said railroad, extensions and branches, and of conducting the business thereof, and of all the said repairs, replacements, alterations, improvements and additions, and all payments which shall have been made for taxes, assessments, charges or liens, prior to the lien of this indenture, upon said premises or any part thereof, as well as just compensation for its own services, the trustee shall apply the money so arising and remaining to the payment of the accrued interest on the bonds hereby secured in the order in which such interest shall have become due, ratably, to the persons entitled thereto, and of any other moneys in respect of which the company shall be in default, and if,

after paying all interest and all other moneys which shall have become due, a surplus shall remain, such surplus and the said property shall be forthwith paid and returned to the company, provided it shall not then be in default in respect of any other matter or thing herein contained.

Article third. In case default shall be made and continued as aforesaid, or in case default be made in the payment of the principal of any of said bonds when the same shall have become due and payable according to the terms thereof, the trustee may, and upon requisition and indemnity as prescribed in article eighth of this indenture, the trustee shall, after entry as aforesaid, or without entry, personally, or by its attorney or agents, sell and dispose of all and singular the aforesaid plant and property and the said railroad, extensions, branches, premises and property, and all the estate, right, title and interests of the company in and to the same with the appurtenances and all other the property, rights, privileges, franchises, exemptions and immunities thereto belonging, and hereby conveyed, or intended so to be, as an entirety, to the highest and best bidder, at public auction at some place in the State of Florida, and at such time as it shall appoint, having first given notice of the time and place of such sale by advertisement, published not less than once in each week for six successive weeks in such newspapers in the State of Florida in Tampa and elsewhere as may be required by law, and in some newspaper published in the city of New York, in the State of New York, of general circulation in the business communities of said localities, or may adjourn the sale from time to time in its discretion, and if so adjourning shall make the said sale at the time and place to which the same may be so adjourned; and shall make and deliver to the purchaser or purchasers good and sufficient deed or deeds of conveyance of the same in fee-simple absolute, which sale and conveyance shall be a perpetual bar, both in law and equity, against the mortgagor and all persons claiming, or to claim, the said premises and property, or any part thereof, or interest therein, by, through or under it; and after deducting from the proceeds of the said sale just allowances for all expenses thereof, including attorney and counsel fees, and the expenses and liabilities which may have been paid and incurred by the trustee in operating, maintaining and managing the said plant and property and the said railroad, extensions, branches and property and the business thereof while in possession, and all payments which may have been made by the trustee for taxes or assessments, or prior liens or charges, on the property hereby conveyed, or any part thereof, as well as reasonable compensation for its own services, it shall be the duty of the trustee to apply the residue of the proceeds of the said sale to the payment and satisfaction of the principal and accrued interest of the said outstanding bonds, whether the said principal shall have previously become due or not, without discrimination or preference by reason of the time or times of their actual issue or otherwise, but rateably to the aggregate amount of unpaid principal and accrued interest; and if, after payment and satisfaction in full of all said bonds, a surplus of the said proceeds shall remain,

the same shall be paid over to the company, or its successors or assigns.

It is hereby provided, declared and agreed, that at the sale of said plant, property, railroad, extensions, branches, premises, property, appurtenances, rights, privileges, franchises, exemptions and immunities, whether the said sale be made by virtue of the power herein granted or by judicial authority, the purchaser or purchasers shall be entitled, in making settlement for and payment of the purchase-money, to deliver to the trustee, if said sale be made by the exercise of the power herein granted, or, in case of a judicial sale, to the person or persons legally appointed and qualified to receive such purchase-money, and to turn in and use any of the bonds or coupons secured by this indenture and held by the said purchaser or purchasers in or towards the payment of said purchase-money, reckoning and computing said bonds or coupons at a sum equal to and not exceeding that which would be payable out of the net proceeds of said sale to the purchaser or purchasers, as the holder or holders of said bonds or coupons, for his or their just share and proportion of said net proceeds, if the sale had been made wholly for money. And it is further declared, that the receipt or receipts of the trustee shall be a sufficient discharge to the purchaser or purchasers at any sale made under or by virtue of the power of sale herein granted; and that such purchaser or purchasers, or his or their heirs, executors or administrators, shall not, after the payment of the purchase-money, and having such receipt, be liable to see to the application thereof for, to or upon the purposes and trusts of this indenture; or in any manner be answerable for any loss, misapplication of such purchase-money, or any part thereof, or to be obliged to inquire into or concerning the necessity, expediency, or authority of or for such sale. And it is further declared, that at any such sale, whether made by virtue of the power hereby granted or pursuant to or under a judgment or decree of a court, the trustee may bid for and purchase, or cause to be bid for and purchased, the said plant, property, railroad, its extensions, branches, premises, property, rights, privileges, franchises, exemptions and immunities for and on behalf of all the holders of the bonds and coupons hereby secured, and then outstanding and unpaid, in the proportion of their respective interests, at a price not exceeding the whole amount of such outstanding and unpaid bonds and coupons, and the cost and expense of such sale.

Article fourth. In case default shall be made at any time in the payment of any installment of interest on any of the bonds hereby secured, when such interest shall have become due and payable, the payment of the said interest having been duly demanded, and the coupons therefor having been duly presented at the place named therefor, and if any such default shall continue for the period of sixty days, then and in such case the principal of all said bonds shall, at the election of the trustee, become and be immediately due and payable, anything in the said bonds, or herein contained, to the contrary notwithstanding. But a majority in interest of the holders of all said bonds then outstanding, unpaid or unredeemed, may, in

writing, instruct the trustee, in any such case, to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper, and they may annul or reverse the election of the trustee; provided, however, that no waiver of or by the trustee or bondholders shall extend to or be taken to affect any case of subsequent default or to impair the rights resulting therefrom.

Article fifth. The trustee shall at all times during the continuance of the trust hereby created have full power and authority, to be exercised in its own discretion, and not otherwise, to release and convey to any party or parties who may be designated in writing by the company to receive them, or to reconvey to the said party of the first part, or to release from the lien and operation of these presents, in such other manner as the trustee may deem proper, any portion of the premises hereinbefore granted, which may be appurtenant to the said plant and property or the said railroad, extensions or branches, but which, in the judgment of the trustee, shall be unnecessary for use in connection therewith, and which shall have been acquired or held for stations, depots, shops, wharves or other buildings, or for a supply of fuel, gravel or other material, or for any other of the purposes of said mortgagor, whether as lessee or otherwise; and also to convey or release, as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of location of any station-house, depot, shop or other building connected with the said railroad, extensions or branches, and such lands occupied by the track and adjacent to such station-house, depot, shop or other building as the company may deem it expedient to disuse or abandon by reason of such change; and the trustee may consent to any changes in the location of the track, or of station-houses, depots, shops or other buildings, which, in the judgment of the company, shall have become expedient, and execute and deliver the instruments necessary or proper to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustee upon the trusts of these presents.

And the trustees shall also have full power to allow the company, from time to time, to dispose of, according to its discretion, such portion of the machinery, tools, implements and material which shall, at any time, be acquired or held for the use of the said plant, property, railroad, extensions or branches, and shall have become unfit or unnecessary for such use; but any or all new or other machinery, tools, implements and material, or other property which may be acquired in substitution for any so released, shall, by virtue and force hereof, become, and be, immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer, or other act or proceeding whatever. The certificate in writing of the president of the party of the first part, accompanied by the affidavit of its manager, superintendent or engineer, as to the existence of any fact or facts with respect to the property sought to be released, shall, when delivered

to the trustee, be conclusive evidence to the said trustee of the truth of any such fact or facts.

Article sixth. The bonds hereby secured or intended to be, shall, as soon as may be, and as fast as the same may be required for issue, be delivered to the trustee by the company, and the trustee shall retain the same until they shall be issued, or redelivered to the company for issue, as herein provided, that is to say:

\$150,000 of the said bonds being first certified by the trustee, shall with the coupons thereto belonging be by it redelivered to the company as hereinafter provided. The trustee shall and will retain and hold in its possession \$200,000.00, par value of said issue of bonds secured hereby for the purpose of providing for the payment of the series of bonds of the party of the first part, known and designated as first-mortgage bonds and amounting in the aggregate to \$200,000, all of which are dated July 1st 1893, and mature on the first day of July, 1913, and are now outstanding. The trustee retaining the possession and custody of the said \$200,000, of the bonds secured hereby as above provided, shall certify and deliver the same to the party of the first part from time to time, but only on the production of due and satisfactory proof of the payment and cancellation of bonds of the said series of first-mortgage bonds above described and in amounts equivalent, at their par value, to the bonds so paid and cancelled. But in case of such delivery by the trustee of any of said \$200,000 of bonds so to be retained as above provided, the trustee shall upon making such delivery detach therefrom and cancel all overdue coupons or interest warrants. The said \$150,000 of bonds so to be certified and redelivered as herein provided, and the said \$200,000, so to be retained by the trustee, aggregating together \$350,000, being the entire amount of bonds secured hereby or herein.

As to the \$150,000, of bonds to be issued hereunder and secured hereby, the trustee shall retain the same and shall redeliver the same to the company, from time to time, but only upon the written demand of the president of said company, accompanied by the certificate of the president, and accompanied by a certified copy of a resolution of the board of directors of said company setting forth that the bonds so demanded are needed for the purpose of enlarging and improving the company's plant and property by making betterments or otherwise, and that the proceeds of said bonds are to be devoted by the said directors to the purposes above-mentioned, which certificate shall be conclusive and the sole evidence to the trustee of the right of the company to have so delivered to it such residue of said bonds for the purposes and in the amount aforesaid.

And the company hereby further covenants and agrees to and with the trustee that the whole of the proceeds of the negotiations or sales of the residue of the said bonds hereby secured, to wit: the said \$150,000, of bonds, shall be faithfully and exclusively applied to the purposes for which the same are authorized to be issued as herein set forth.

But nothing herein contained shall be deemed to make the said trustee answerable in any respect for the use made of said bonds nor

shall said trustee be deemed liable to any person or persons whomsoever for any failure on the part of the company to comply with the terms of the foregoing covenant. Nor shall it be the duty of said trustee to take proceedings to enforce said covenant unless requested so to do in due form by a majority in interest of the holders of said bonds.

Article seventh. During the currency of the said bonds, or any of them, the company shall maintain an office in the city of New York for the registration and transfer of said bonds.

Article eighth. In case default shall be made in the payment of any semi-annual installment of payment of interest on any of said bonds, and if such interest shall remain unpaid and in arrear for the period of sixty days, or in case default shall be made in respect of any requirement, covenant or agreement herein contained, on the part of the company, to be observed, done, kept or performed, and if any such default shall continue for a period of sixty days, or in case default shall be made in the payment of the principal of said bonds, then, and in either or any or every such case, it shall be the duty of the trustee, upon a requisition in writing, signed by the holders of not less than one-quarter in amount of the said bonds then outstanding, and upon adequate security and indemnity against all cost, expenses and liabilities to be by the trustee incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the power granted by articles second and third of this indenture, or any of said powers, or by a suit or suits in equity or at law in aid of the execution of such powers or otherwise, as the trustee, being advised by counsel, shall deem most effectual to enforce such rights; subject to the power hereby declared, of a majority in interest of the holders of said bonds that shall then be outstanding, in writing, to instruct the trustee to waive any such default, or upon adequate security and indemnity as aforesaid, to enforce the rights of the bondholders by reason thereof; provided, that no action of the trustee or of the bondholders in waiving a default, shall extend to, or be taken to apply to or affect any subsequent default, or impair the rights of the trustee or of the bondholders resulting from such subsequent default. It being understood, and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same, or the exercise of any of them, shall not be deemed, in any manner whatsoever, to deprive the trustee, or the beneficiaries under the trust, of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof; provided, also, and it is hereby expressly declared and agreed, that no holder or holders of a bond, or of any bonds, secured hereby, shall have the right to institute any suit, action or proceeding, in equity or at law, for the foreclosure of this indenture, or for the execution of the trusts thereof, or for the appointment of a receiver, or any other action, suit or remedy hereunder, or upon any bond or coupon for interest hereby accrued, without first giving notice in writing to the trustee, of default

having occurred and continued, as in this article aforesaid, and requesting the trustee, and affording it a reasonable opportunity to institute such action, suit or proceeding in its own name, or to proceed to exercise the powers hereinbefore granted, and such notification and request are hereby declared to be conditions precedent to any suit or action, or right of suit or action, for the foreclosure or for the execution of the trusts of this indenture or for the appointment of a receiver, or to any other action, suit or remedy hereunder or under or upon any bond or coupon for interest hereby secured.

Article ninth. The words, "the trustee," when and as used in this indenture shall, for all purposes, be taken, held and construed to mean, include and describe the corporation or corporations, or the person or persons charged, for the time being, with the execution of the trusts herein created, expressed or declared, whether the same be the party of the second part or any successor or successors in said trust. The trustee shall not, in any manner, be answerable for any act, default, neglect or misconduct of any of its agents or employes by it appointed or employed in or about the execution of any of said trusts, provided such agent or employe shall have been selected with reasonable care and discretion; nor shall the trustee be answerable in any other case, except for its own willful default or misconduct. The trustee shall be entitled to a just compensation for all services it may render, and to be reimbursed for all reasonable expenses by it paid in the execution of the said trusts. The trustee may resign and be discharged of the trusts hereby created upon giving notice in writing to the company at least three months before such resignation shall take effect, or such shorter period as the company shall consent to accept as sufficient notice. And the trustee may be removed by two-thirds in interest of the holders of all said bonds hereby secured and outstanding, by instrument or instruments in writing under their hands and seals.

In case of the resignation or removal of the trustee a successor shall be appointed by the majority in amount of the holders of all said bonds hereby secured and then outstanding, by instrument or instruments in writing, under their hands and seals; and until an appointment be so made the president of the mortgagor, with the written approval and consent of the holders of one-fourth of the outstanding bonds hereby secured, may appoint a trustee to fill the vacancy for the time being; and in such case and also in case of an appointment by a majority in interest of the bondholders as aforesaid, the new trustee or successor so appointed shall thereupon become, and be, vested with all the powers, authorities, estates, rights, titles and interests, granted or conveyed to, or conferred upon, the said party of the second part by these presents, and all the rights, powers, authorities and requisites to enable such new trustee or successor to execute, perform and fulfill the powers, duties and purposes of this trust, by force of these presents, without any further assurance or conveyance, so far as such effect may be lawful; nevertheless, it shall be the duty of the trustee, resigning or being removed, immediately to execute all such conveyances, assurances and other instruments as may be fit and expedient for the purpose

of assuring the legal estate in the premises to the new trustee or successor so appointed.

In case of a vacancy being temporarily filled by appointment by the president of the mortgagor, under the foregoing provision in that behalf, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of any of the bondholders, upon due notice to the mortgagor, and for cause to annul such appointment, and to appoint another trustee in place of the trustee whose appointment shall have been so annulled, to hold and exercise the trust for the like term as such trustee under the president's appointment would hold the same but no longer.

And it is further agreed that whenever, and as often as any contingency shall arise in which a meeting of the holders of the bonds hereby secured shall be necessary or expedient, it shall be the duty of the trustee or of the president of the party of the first part, on the written request of the holders of not less than one-fifth in amount of the principal of the bonds then outstanding, stating therein the object of such meeting, to call a meeting in the manner aforesaid, and at such meeting so called the holders of the said bonds may attend in person or by proxy, and it shall be competent for a majority of them in amount of the principal of their said bonds to execute all the powers and privileges conferred upon them by these presents, or which may otherwise be lawfully exercised or enjoyed by them provided that the holders of a majority in amount of the principal of the then outstanding bonds attending in person or by proxy shall be necessary to constitute a quorum at such meeting, and that any vote of such meeting affecting or intending to affect any person or corporation, including the parties hereto or their successors, may, by any person or corporation so to be affected, be required to be authenticated by the signatures of the persons so voting.

Article tenth. The mortgagor does hereby covenant promise and agree to and with the trustee, that it shall and will well and truly pay, or cause to be paid, when the same shall respectively become due and payable, from time to time, all taxes and assessments and other charges which may be lawfully levied, assessed or imposed upon the said premises hereby conveyed, or any part thereof, or upon the mortgagor by reason of the said premises, or any part thereof, or the income or earnings thereof; that it shall and will also promptly pay, satisfy and discharge, according to the ordinary course of business, all moneys due, and all liabilities incurred, for labor, supplies, materials, right of way, lands, equipment and improvement of every kind done, furnished, acquired or made for or in connection with the construction, maintenance, operation, renewal, repair or improvement of the said plant, property, railroad extension and branches, and their appurtenances; and if the mortgagor shall at any time make any lease or other contract respecting the operation of the said plant, property, railroad, extension and branches, or any of them, or any part thereof, the same shall be expressly made subject to this indenture, and to all the stipulations, covenants and agreements herein contained.

Article eleventh. The mortgagor does hereby further covenant and agree to and with the trustee, that it shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, execute under its corporate seal, acknowledge and deliver all such further deeds and assurances in the law, for the better assuring to the trustee, upon the trusts and for the purposes herein expressed, the said plant, property, railroad extension and branches, premises, property, appurtenances, rights, privileges, immunities and franchises hereinbefore mentioned and hereby conveyed or meant or intended so to be, whether now owned, acquired or held, or hereafter to be acquired or possessed by it, as by the trustee or its counsel shall be reasonably advised or required.

In witness whereof, the party or the first part, by a resolution of its board of directors, has caused these presents to be signed by its president and its corporate seal, attested by its secretary, to be hereto affixed, and the said party of the second part, to evidence its acceptance of the trusts by this indenture created, has caused these presents to be signed by its president, and its corporate seal, attested by its secretary, to be hereto affixed in triplicate originals, the day and year first hereinbefore written.

By E. S. DOUGLASS, *President*.

Attest: JOHN T. DOUGLASS, *Secretary*.

Witnesses as to the signatures of E. S. Douglass, president, and John T. Douglass, secretary—

E. L. DOUGLASS.

J. A. HANSBROUGH.

THE CENTRAL TRUST COMPANY OF
NEW YORK, [SEAL.]

By E. FRANCIS HYDE, *Second Vice-President*.

Attest: B. G. MITCHELL,

Ass't Secretary.

Signed, sealed, and delivered in the presence of—

F. B. SMIDT.

CHARS. KELLEY, Jr.

STATE OF FLORIDA,)
County of Hillsborough.)

On this day personally appeared before me E. S. Douglass and John T. Douglass, president and secretary, respectively, of the Consumers' Electric Light and Street Railroad Company, to me well known as the persons described in and who executed the foregoing deed of trust and acknowledged that they executed the same for the purposes therein expressed.

In witness whereof, I hereunto set my hand and official seal this 18th day of September, A. D. 1895.

[SEAL.]

J. A. HANSBROUGH,
Notary Public, State of Florida.

STATE OF NEW YORK, }
City and County of New York, } ss :

On this 24th day of September, 1895, before me personally came E. Francis Hyde, the second vice-president of the Central Trust Company of New York, to me personally known, who being by me duly sworn, did depose and say that he resided in the city of New York, that he was second vice-president of the Central Trust Company of New York, the corporation described in and which executed the foregoing instrument by him as such officer thereof; that he knew the corporate seal of said corporation, and that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the board of trustees of said corporation, and that he subscribed his name thereto as second vice-president thereof by the like authority. And the said E. Francis Hyde further acknowledged to me that he executed the foregoing instrument for and in behalf of, and as the act and deed of the said Central Trust Company of New York.

FRANK B. SMIDT,
Notary Public, N. Y. Co.

[SEAL.]

Endorsed: Circuit court of the United States, southern dist. of Florida. Central Trust Company of New York against The Consumers' Electric Light & Street R. R. Co. and another. (Original.) Bill of complaint. Butler, Notman, Joline & Mynderse, solicitors for complainant, 54 Wall street, New York city. Filed before July 22nd, 1897. The clerk will file of same date. Don A. Pardee, judge. Filed July 22nd, 1897. E. O. Locke, clerk, by Louis Starke, dep. clerk.

EXHIBIT 2 TO PETITION.

Order Granting Injunction.

United States Circuit Court, Fifth Judicial Circuit, at Chambers,
 Don A. Pardee, judge.

UNITED STATES OF AMERICA, }
Southern District of Florida. }

To the Consumers' Electric Light and Street Railroad Company, the Tampa Suburban Railroad Company, and all other persons claiming or pretending to claim under them and all other persons whomsoever, Greeting:

Whereas the Central Trust Company of New York has exhibited a bill of complaint before the justices of our circuit court of the United States for the southern district of Florida against you, the said The Consumers' Electric Light and Street Railroad Company and The Tampa Suburban Railroad Company, touching the matters therein complained of, and it was ordered that a restraining order issue to restrain you and each and every of you from doing

all the matters and things for the doing of which you are prayed to be restrained according to the prayer of said bill:

Now, therefore, it is—

Ordered that this court take jurisdiction of the said cause, and that you and each of you show cause before one of the judges authorized to hold the circuit court of the United States for the southern district of Florida, at chambers, in the city of Tampa, on the fourth day of August, 1897, at 10 a. m., or as soon thereafter as counsel can be heard, why a receiver of the mortgaged property, as prayed for in the bill of complaint herein, should not be granted, and in the meantime and until the further order of the court a restraining order issue enjoining and restraining you and each of you, your agents and servants, from interfering with or in any manner disposing of any of the property covered by the mortgage recited in said bill nor any of the franchises or any part or parts thereof covered by said mortgage or any of the earnings or proceeds of said mortgaged property, and enjoining and restraining you and each of you until the hearing and decision of the said motion for a receiver from instituting or proceeding with any suit, action, or proceeding against the defendants in said bill named in any manner affecting the mortgaged property as set forth in the bill of complaint herein.

July 22nd, 1897.

(Signed)

DON A. PARDEE,

Circuit Judge.

MEM.—The clerk will file this order of date July 22nd, 1897.

D. A. P.

Endorsed: United States circuit court, southern district of Fla. Central Trust Co. *vs.* Consumers' Electric Light and Street Ry. Restraining order. Filed July 22nd, 1897. E. O. Locke, clerk, by Louis Starke, deputy clerk. (Entered, order book, Tampa.)

EXHIBIT 3 TO PETITION.

Notice of Application for Receiver.

In the Circuit Court of the United States for the Southern District of Florida, 5th Judicial Circuit.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, }
vs.

THE CONSUMERS' ELECTRIC LIGHT AND STREET RAILROAD Com- }
 pany and The Tampa Suburban Railroad Company and E. S. }
 Douglass.

To the defendants, The Consumers' Electric Light and Street Railroad Company and The Tampa Suburban Railroad Company and E. S. Douglass:

You will take notice that upon the bill of complaint herein and an order made July 22nd, 1897, and on affidavit of Chester W.

Chapin to be submitted to the court, detailing the transactions in reference to the property of the defendant corporations since July 15th, 1897, the complainant will apply to the Honorable Don A. Pardee, one of the judges of the circuit court of the United States of America of the fifth court, at his chambers, at Wadsworth, Modena county, Ohio, on the 2nd day of August, 1897, at 10 o'clock a. m., for an order appointing a temporary receiver of the property, assets, franchises, and plant of the Consumers' Electric Light and Street Railroad Company, and for such other or further relief in the premises as to the court may seem proper.

Dated July 27th, 1897.

(Signed)

BUTLER, NOTMAN, JOLINE &
MYNDERSE &
P. O. KNIGHT,

Solicitors for Complainant.

EXHIBIT 4 TO PETITION.

Objections of Tampa Suburban Railroad Company to Hearing Outside of Fifth Circuit.

In the Circuit Court of the United States, Fifth Judicial Circuit, in and for the Southern District of Florida. In Equity.

CENTRAL TRUST COMPANY OF NEW YORK, a)	} Bill of Foreclosure.
Corporation, &c.,	
vs.	
CONSUMERS' ELECTRIC LIGHT & STREET RAIL-)	
ROAD Co. <i>et al.</i>	

Comes The Tampa Suburban Railroad Company, a corporation, &c., one of the defendants in the above-entitled suit, by its solicitors, Shackelford & Pettingill, Hugh C. Macfarlane, and G. L. Larrimore, and in pursuance of a notice served upon said defendant of an application for the appointment of a receiver in said suit this day to be made before the Hon. Don A. Pardee, one of the judges of the court aforesaid, at his chambers, in the town of Wadsworth, in the State of Ohio, appearing specially for the purpose following and no other, objects to the jurisdiction and authority of the said Hon. Don A. Pardee, judge as aforesaid, to make or enter any order or decree whatever in said cause for the following reasons, to wit:

First. Because the jurisdiction of the circuit judges of the courts of the United States can only be exercised within the territorial limits of their respective circuits, while the said Hon. Don A. Pardee, judge as aforesaid, is now, at the time and place of said application, without said territorial limits of the fifth judicial circuit of the United States, to wit, in Wadsworth, in the State of Ohio, as shown by the written notice of said application served as aforesaid, and is proceeding to hear said application at said Wadsworth, in said State of Ohio.

Second. Because the Hon. Don A. Pardee, as one of the circuit

judges of the fifth judicial circuit of the United States, has no jurisdiction or authority by virtue of his said office to make or enter any order in the above cause while personally sojourning in the State of Ohio and outside the territorial limits of the said fifth judicial circuit of the United States, in which said suit is pending and of which he is one of the circuit judges, as aforesaid.

Wherefore said defendant respectfully asks that said objections be sustained and all orders entered in said cause by the judges of said circuit court outside of the territorial limits of said circuit be vacated and set aside.

(Signed)

SHACKLEFORD & PETTINGILL,
HUGH C. MACFARLANE,
G. L. LARRIMORE,

*Solicitors for Tampa Suburban Railroad Company,
Appearing Specially.*

Endorsed: In U. S. circuit court, southern dist. of Fla. Central Trust Co. *vs.* Consumers' Electric Light & St. Railroad Co. *et al.* Objections to jurisdiction. Filed this 3rd day of August, A. D. 1897. (Signed) E. O. Locke, clerk, by H. L. Crane, deputy clerk.

EXHIBIT 5 TO PETITION.

Objections of Tampa Suburban Railroad Company to Continuation of Hearing.

In the Circuit Court of the United States, Fifth Judicial Circuit, in and for the Southern District of Florida. In Equity.

CENTRAL TRUST COMPANY OF NEW YORK	}	Bill of Foreclosure.
<i>vs.</i>		
CONSUMERS' ELECTRIC LIGHT & STREET RAIL- ROAD COMPANY <i>et al.</i>		

Now comes The Tampa Suburban Railroad Company, a corporation, etc., by Shackleford & Pettingill, Hugh C. Macfarlane, and G. L. Larrimore, its solicitors, said corporation being one of the defendants in the above-entitled cause, and respectfully enters its objection to the hearing at this time before the Hon. Don A. Pardee, one of the judges of the court aforesaid, of the application on behalf of the complainant for the appointment of a receiver in said cause upon the following grounds, to wit:

First. Because the original papers heretofore filed in said cause in the court aforesaid, including the original bill of complaint and the exhibits thereto, are not now produced before the Hon. Don A. Pardee for the purposes of said hearing and are not accessible to the solicitors for this defendant, but the said original papers now are, as counsel are informed by the solicitors for the complainant, in the clerk's office in the city of Jacksonville, Florida.

Second. Because, while the notice of said application served upon said defendant, as shown by the record herein, specified that said

application was to be made upon the original bill of complaint herein and the affidavit of one Chester W. Chapin to be submitted to the court, detailing the transactions in reference to the property of the defendant corporations since July 15th, 1897, the said complainant has produced and filed in said cause and submitted to the said judge for the purpose of said hearing an "amendment and supplement bill," as well as the affidavits of numerous persons other than the said Chester W. Chapin, but no affidavit from the said Chester W. Chapin to the effect stated in said notice.

Third. Because, although a rule of the said court requires that any suit begun in the said southern district of Florida shall be begun in the division of said district in which the defendant or defendants in said suit reside, and although, as shown by affidavits filed herein, both said defendants reside and have their only places of business in the county of Hillsborough, State of Florida, which is in the middle division of said district, yet, as shown by the certificate of the deputy clerk of said court for said middle division of said district, no bill of complaint or papers of any kind in the above-entitled suit have been filed in his office at or before the time of the giving of the notice aforesaid or up to the 29th day of July, A. D. 1897, and this defendant or its solicitors has had no opportunity of inspecting the said original bill or the exhibits attached thereto up to the time of this hearing.

(Signed) SHACKLEFORD & PETTINGILL,
Solicitors for Defendant Tampa Suburban Railroad Co.

Endorsed: In the U. S. circuit court, fifth circuit, in and for the southern district of Florida. In equity. Central Trust Co. of New York *vs.* Consumers' Electric L. & St. R. R. Co. *et al.* Bill for foreclosure, &c. Objections of Tampa Suburban R. R. Co. to hearing of application for receiver. Filed this 3rd day of August, A. D. 1897. (Signed) E. O. Locke, clerk, by H. L. Crane, deputy clerk.

EXHIBIT 6 TO PETITION.

Order Appointing Receiver.

In the Circuit Court of the United States for the Southern District of Florida.

CENTRAL TRUST COMPANY OF NEW YORK, Complainant,	}
<i>against</i>	
THE CONSUMERS' ELECTRIC LIGHT & STREET RAILROAD COMPANY and The Tampa Suburban Railroad Company, Defendants.	}

This cause coming on to be further heard upon the verified bill of complaint heretofore filed in this case and the exhibit thereto, and the amendment and supplement thereto, and due proof of service of the restraining order heretofore issued herein, and the affidavit of the directors of the said Consumers' Company, sworn to

the 27th day of July, 1897, and due proof of service of the notice of this application, and upon the affidavits and exhibits offered by the complainant and by Messrs. Shackelford & Pettingill, counsel claiming to represent the Tampa Suburban Railroad Company, all of which are herewith filed, it is now upon consideration ordered and adjudged that Chester W. Chapin, Esq., recommended therefor by the complainant and by the board of directors of the Consumers' Electric Light and Street Railroad Company, be, and he is hereby, appointed receiver of this court of all and singular the railroads, lands, and premises, plant, and other property of the Consumers' Electric Light & Street Railroad Company, as described in the bill of complaint herein, the same being the property covered by the mortgage of said Consumers' Electric Light & Street Railroad Company dated July 1, 1895, and situated at Tampa, Florida: to have and to hold the same as the officer of and under the orders and directions of this court. The said receiver is hereby fully authorized and directed to take immediate possession of all and singular the property above described, wherever situated and found, and to continue the operation of the railway and plant of the defendant companies and conduct systematically their business in the same manner as at present, and discharge all the public duties obligatory upon the defendants or either of them.

Each and every of the officers, directors, agents, and employees of the said defendants or either of them are hereby required and commanded forthwith, upon demand of the said receiver or his duly authorized agent, to turn over and deliver to the said receiver or his duly constituted representative all the property of the defendant companies above mentioned, and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, and other property in his or their hands or under his or their control, and each and every of such directors, officers, agents, and employees are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by said receiver or his duly constituted representative in conducting the operation of the said property and in discharging his duty as receiver, and each and every of such officers, directors, agents, and employees of the defendant companies or either of them are hereby enjoined from interfering in any manner whatever with the possession or management of any part of the property over which the receiver is hereby appointed or from interfering in any manner whatever with the possession or management of any part of the property over which the receiver is hereby appointed, or from interfering in any way to prevent the discharge of the duties of such receiver.

Said receiver is hereby fully authorized to operate the street-railway system and other property of the corporation in his discretion and in such manner as will, in his judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom and all the debts due said company of every kind, and for such purpose is hereby vested with full power, at his discretion, to employ and discharge and fix the compensation of all such officers,

attorneys, managers, superintendents, agents, and employees as may be required in the proper discharge of his trust. Said receiver is hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary, in his judgment, for the proper protection of the property and trusts hereby vested in him, and to likewise defend all such actions instituted against him as such receiver, and also to appear in and conduct the prosecution or defense of any suits now pending in any court against the defendants the prosecution or defense of which will, in the judgment of said receiver, be necessary for the proper protection of the property placed in his charge and the income thereof.

Said receiver shall from time to time, out of the funds coming into his hands from the operation of the property, pay the expenses of operating the same and executing his trust and all taxes and assessments upon the said property or any part thereof.

Said receiver is hereby required to open proper books of account, wherein shall be stated the earnings, expenses, receipts, and disbursements of his said trust, and to preserve vouchers for all payments made by him on account thereof, and to file in this court monthly statements of his receipts and disbursements.

Said receiver shall be at liberty from time to time to make application to the court for such further order or direction as to the operation of said property in his charge or the performance of his duties in connection therewith as in his judgment may be necessary.

Said receiver is hereby required within five days to file with the clerk of the circuit court of the United States for the southern district of Florida a proper bond, with surties, to be approved by the clerk of this court or by a judge thereof, in the penal sum of \$10,000, conditioned for the proper discharge of his duties, and to account for all funds coming into his hands, according to the orders of this court.

And it is further ordered that the original and supplemental bills in this cause and all exhibits, affidavits, and other papers filed therein be transferred to and filed in the clerk's office, at Tampa, Florida, at which place all process shall be returnable.

Witness my hand this third day of August, 1897.

DON A. PARDEE,

Circuit Judge.

Endorsed: U. S. circuit court, southern district of Florida. Central Trust Company of N. Y. against The Consumers' Electric Light & Street Railroad Co. *et al.* Order appointing receiver. Butler, Notman, Joline & Mynderse, complainant's solicitors, 54 Wall street, New York city. Filed this 9th day of August, A. D. 1897. (Signed) Eugene O. Locke, clerk, by H. L. Crane, deputy clerk. (6:30 a. m.)

EXHIBIT 7 TO PETITION.**Letter of Judge Pardee.**

United States Circuit Court, Fifth Judicial Circuit, at Chambers,
Don A. Pardee, Judge.

WADSWORTH, OHIO, *August 4th, 1897.*

Eugene O. Locke, Esq., clerk U. S. circuit court, Jacksonville, Fla.

DEAR SIR: Enclosed please find order appointing receiver in The Central Trust Company of New York *v.* The Consumers' Electric Light & Street Railroad Company and The Tampa Suburban Railroad Company, which please file. I send this day by express to your address, collect charges, supplemental bill and numerous affidavits offered by counsel, which, on receipt, also file of same date as order appointing receiver.

Attached to the order appointing receiver I have appended an order directing the original bill and all the affidavits and exhibits filed to be transferred to the clerk's office, at Tampa. Please see to this also.

Yours, &c.,

(Signed)

DON A. PARDEE.

Endorsed: U. S. circuit court, southern dist. of Fla. Central Trust Co. of N. Y. *vs.* Consumers' Electric Light & St. R. R. Co. *et al.* Letter—Judge Pardee. Filed this 9th day of August, A. D. 1897. (Signed) E. O. Locke, clerk, by H. L. Crane, deputy clerk.

EXHIBIT 8 TO PETITION.**Affidavits Attached to Motions Filed in Circuit Court by Tampa Suburban Railroad Company.**

In the Circuit Court of the United States, Fifth Judicial Circuit, in and for the Southern District of Florida. In Equity,

CENTRAL TRUST COMPANY OF NEW YORK	} Bill of Foreclosure.
<i>vs.</i>	
CONSUMERS' ELECTRIC LIGHT & STREET RAILROAD COMPANY <i>et al.</i>	

STATE OF OHIO,)
Medina County.)

Personally appeared before the undersigned authority Birt Freeborn and J. F. Detweiler, to me well known, and each of whom, being first duly sworn, says that he is a resident and citizen of the town of Wadsworth, in said county and State, and that he is personally acquainted with the Hon. Don A. Pardee, judge of the circuit court of the United States in and for the fifth judicial circuit, and that he knows that the said Hon. Don A. Pardee was at his summer residence, situated about five miles from the said town of

Wadsworth, on the 22nd day of July, A. D. 1897, and that he was not out of the State of Ohio on said date.

(Signed)

BIRT FREEBORN,
J. F. DETWEILER.

Sworn to and subscribed before me this 3rd day of August, A. D. 1897.

(Signed)
[SEAL.]

FRANK C. LEE,
Notary Public.

UNITED STATES OF AMERICA, }
Southern District of Florida. }

Thomas M. Shackelford, being duly sworn, deposes and says that he is a member of the law firm of Shackelford & Pettingill, which said firm is composed of N. B. K. Pettingill and affiant; that the said firm of Shackelford & Pettingill have been duly employed and authorized by the Tampa Suburban Railroad Company to represent it in all suits and other matters which have arisen or may arise pertaining to it or affecting its interests; that at the request of the said Tampa Suburban Railroad Company and in response to a notice served upon it by the United States marshal of this court of an application to be made before the Hon. Don A. Pardee, one of the judges of the United States circuit court for the fifth judicial circuit, at his chambers, in the town of Wadsworth, county of Medina and State of Ohio, on the 2nd day of August, A. D. 1897, at 10 o'clock a. m., or as soon thereafter as counsel could be heard, for the appointment of a receiver of the property described in the bill of complaint herein, this affiant proceeded to the said town of Wadsworth, where he was joined by the said N. B. K. Pettingill, and affiant and the said Pettingill appeared before the said Hon. Don A. Pardee, judge as aforesaid, on the said 2nd day of August, A. D. 1897, at his chambers, in the said county of Medina, for the purpose of objecting to and resisting the appointment of such receiver, and at said time and place, the counsel for the complainant in this suit being then and there present for the purpose of making said application and insisting upon the granting of the same, the said N. B. K. Pettingill, on behalf of said firm of Shackelford & Pettingill, as solicitors and counsel for said Tampa Suburban Railroad Company, did present to the said judge written objections to his hearing or entertaining such application or to his making any order in said cause on the ground that said judge was beyond the territorial limits of his said circuit, and therefore without any authority or jurisdiction to make any order affecting the rights or property of the said Tampa Suburban Railroad Company, and the said judge did then and there state to and in the presence of said counsel that such objections would be considered as filed and overruled, and the said judge continued the hearing of said cause until 10 o'clock a. m. on the 3rd day of August, A. D. 1897, at which time and place the said counsel for complainant were again present urging the granting of their said application, and affiant and the said Pettingill were also present resisting and objecting to the consideration of the same, and the said Pettingill did then and there present to the said judge cer-

tain typewritten objections to his consideration of the same at the said time on certain grounds, which are fully set forth in said objections, which said objections are now on file herein, and the said judge did then and there refuse to entertain said objections and failed to make any ruling thereon, although counsel requested said judge so to do and expected that a written ruling would be made thereon. Affiant further says that said objections so presented to the said judge by the said Pettingill on the said 2nd and 3rd days of August, A. D. 1897, were delivered to the said judge on the last-named date, together with the affidavits offered by the respective counsel for filing at said hearing, all of which papers were left in the possession and custody of said judge, and this affiant and the said Pettingill did not know that said judge had made no written ruling on any of said objections until said papers were received by H. L. Crane, Esqr., the deputy clerk of the U. S. circuit court at Tampa, Florida, when affiant and the said Pettingill had an opportunity of examining the same.

Affiant further says that neither on the 2nd nor on the 3rd day of August, A. D. 1897, were any of the original papers, including the original bill of complaint, which had been filed in said cause prior to the said 2nd day of August, present before the said judge, and in response to a request from the said Pettingill for the said original papers the counsel for the complainant stated in the presence of affiant that all of said original papers were in the custody of the clerk of the U. S. circuit court, at Jacksonville, Florida. Affiant further says that counsel for the respective parties left the presence of the said judge at the same time and in company with the said Chester W. Chapin, who was present at said hearing, about noon of the said 3rd day of August, on which date said order appointing a receiver was made, and there was no further hearing on said application to the knowledge of affiant, and at no time during said hearing or at the close thereof, in the presence or hearing of affiant, did the said judge announce or intimate what his decision would be upon such application, but stated that he would take the same under advisement, and neither the said affiant nor the said Pettingill had any opportunity to be heard on behalf of their client as to the selection of a fit and proper person for receiver in the event said judge decided to grant said application.

(Signed)

THOMAS M. SHACKLEFORD.

Sworn to and subscribed before me this 13th day of August, A. D. 1897.

(Signed)

H. L. CRANE,

Deputy Clerk Circuit Court of the United States,
[SEAL OF COURT.] *Southern District of Florida.*

Endorsed: In U. S. circuit court, southern dist. of Fla. Central Trust Company of New York *vs.* Consumers' E. L. & St. R. R. Company *et al.* Affidavits in support of motions to set aside orders granting injunction and appointing receiver. Filed this 4th day of October, A. D. 1897. (Signed) E. O. Locke, clerk, by H. L. Crane, deputy clerk.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. —ORIGINAL—

TAMPA SUBURBAN RAILROAD COMPANY, a corporation,
Petitioner,
vs.

CENTRAL TRUST COMPANY OF NEW YORK, a corporation,
Respondent.

Answer of Respondent Central Trust Company of
New York to Petition of Tampa Suburban
Railroad Company for Writ of Certiorari.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Respondent,

54 WALL STREET,
New York, N. Y.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1897.

TAMPA SUBURBAN RAILROAD COMPANY, a
corporation,

Petitioner,

vs.

CENTRAL TRUST COMPANY OF NEW YORK, a
corporation,

Respondent.

The answer of the Central Trust Company of New York to the petition of the Tampa Suburban Railroad Company for writ of *certiorari*.

Said Central Trust Company of New York, saving and reserving unto itself all benefit and advantage of exception to the said petition, for answer thereunto, or unto so much and such parts thereof as it is advised it is material to make answer unto, saith :

I.

It believes to be substantially true the allegations contained in said petition concerning the incorporation of the petitioner and of the Consumers' Electric Light and Street Railroad Company, and of said Central Trust Company of New York.

II.

It admits that on July 22, 1897, it filed its bill of complaint in the Circuit Court of the United States for the Southern District of Florida against said Consumers' Electric

Light and Street Railroad Company and said petitioner, but, for an exact statement of the contents of said bill, it prays that reference may be had to the record herein when the same shall be produced before this Honorable Court, and saith that the allegations of said petition in that behalf do not contain a complete statement of the matters and things alleged in said bill.

III.

It admits that said bill, so filed, had the signature of said Central Trust Company of New York and of its solicitors thereto, and was sworn to by G. Sherman, vice-president of said trust company, in the usual form, and that to said bill was attached, as an exhibit, a printed copy of the trust deed referred to in said bill, and it prays that reference may be had to the copy of said trust deed, which is part of the record herein, when the same shall be submitted to this Honorable Court, and it denies that the material provisions of said trust deed are all set forth in said petition; and it is informed and believes that it is not true that the provisions of said trust deed numbered two and three are void under the laws of Florida.

It says that it is not true that said trust deed was executed in the exact form set forth in said petition, but alleges that the trust deed was executed under the corporate seal of the Consumers' Electric Light and Street Railroad Company thereto duly affixed, as will appear by reference to the original of said trust deed, and to the record thereof, though, by an oversight, the printed copy filed as an exhibit to the bill of complaint filed by said Central Trust Company of New York did not show that the original of said bill of complaint had thereto affixed the corporate seal of said Consumers' Electric Light and Street Railroad Company. And it further saith that the E. S. Douglass who signed said trust deed as president, and the John T. Douglass who signed said trust deed as secretary of said Consumers' Electric Light and Street Railroad Company, were, until about the month of January, 1897, president and secretary also of the petitioner, and have since January, 1897, continued to be directors of both of said companies, and that the petitioner has ever since the making thereof had full and actual knowledge and notice of the existence of said mortgage to said Central Trust Company of New York, and of the issue of bonds outstanding thereunder.

IV.

It admits that said bill of complaint and exhibit were on July 22, 1897, presented to Judge PARDEE, at Wadsworth, Ohio, but denies that the same were so presented without any notice to either defendant, and alleges that at the time and place said bill was so presented Chester W. Chapin, the president of both the defendant companies, was present in person and consented to the application. For a particular statement of the contents of the order made, said Central Trust Company prays that reference may be had to the record of this cause when the same shall be presented to this Honorable Court. It believes it to be true that said order was served as in said petition alleged, and that on or about July 27, 1897, notice of an application before Judge PARDEE on August 2, 1897, was served, together with an affidavit of Chester W. Chapin, substantially as alleged in said petition, but prays that reference may be had to the record of the cause for an exact statement concerning these matters and things.

V.

Answering the allegations contained in the articles of said petition numbered V., VII. and VIII. (there being no article numbered VI.) it admits that on August 4, 1897, the solicitors and counsel for said Central Trust Company and for said Consumers' Electric Light and Street Railroad Company appeared before Judge PARDEE, at Wadsworth, Ohio, pursuant to said notice, and that at the same time petitioner was present by counsel claiming to be its counsel, and that it made certain objections, the nature of which will more fully appear by reference to the record of this cause, and that Judge PARDEE overruled said objections and proceeded with the hearing of the application, and that an amendment and supplement to the bill of said Central Trust Company was thereupon duly presented and filed, together with certain affidavits, all of which will more fully appear by reference to the record of this cause, when the same shall be produced to this honorable Court; and for a true statement of the contents of the amendment and supplement to said bill, and of the affidavits presented therewith and the other papers submitted to Judge PARDEE upon said application, the said Central Trust Company prays that reference may be had to the record of this cause when the same

shall be produced, and denies that the allegations of said petition concerning the contents of the papers so produced are true. It alleges that affidavits were made and filed by, and on behalf of, petitioner after full opportunity had been given said petitioner to examine the papers presented and filed on behalf of said Central Trust Company; that argument of the application was had on both sides, and that full consideration of the application was given by Judge PARDEE, and that thereupon Judge PARDEE made an order appointing Chester W. Chapin Receiver, substantially as alleged in said petition, as will more fully appear from the record of this cause when the same shall be produced. Said Central Trust Company admits that Chester W. Chapin, who was appointed Receiver, was the president of both defendant companies, and alleges that he or his wife owned and held all the bonds secured by the mortgage sought to be foreclosed in said suit except twenty-seven; that he was a large stockholder of the Consumers' Electric Light and Street Railroad Company, and largely interested in the stock of the Tampa Suburban Railroad Company, and that in addition he or his wife had advanced substantially all the money which had been put in said two defendant corporations, and was the holder of most of the floating debt of said corporation; that the wife of said Chester W. Chapin is the holder of all the bonds issued under the mortgage of the Tampa Suburban Railroad Company, petitioner herein.

It denies that said Chester W. Chapin was the man under whose management the Consumers' Company had reached its alleged condition of insolvency, and alleges on the contrary thereof that the condition of insolvency had been caused by the mismanagement of E. S. Douglass and John T. Douglass, who had control of the management of said properties until January, 1897, and who, pretending to have control of the petitioner herein, and in furtherance of their own private schemes, and seeking to wrest away the mortgaged property from the real owners thereof, pretended to cause a lease of the property of said Consumers' Electric Light and Street Railroad Company to be made to the petitioner as herein-after set forth, and pretending to act in the name of said petitioner, are really prosecuting these proceedings and attempting to hinder and delay the only persons having any substantial interest in the property from enforcing their rights therein.

Said Central Trust Company alleges that said E. S. Douglass on July 15, 1897, pretended to hold a meeting of the Board of Directors of said Consumers' Electric Light and Street Railroad Company,

but that no notice of said meeting was given to the directors as required by the by-laws of said company, and the directors really interested in the property, to wit, Chester W. Chapin and the other directors representing his interests, were not present; that at said meeting it was pretended to authorize a lease of all the property of the Consumers' Electric Light and Street Railroad Company to the petitioner, but that such action was wholly void and was set aside at a meeting of the directors of said Consumers' Electric Light and Street Railroad Company duly and regularly called and held July 21, 1897, and prior to the granting of the restraining order herein; that though duly notified of such action of the Board of Directors said E. S. Douglass and John T. Douglass refused to surrender possession of the property or to obey said restraining order and wholly disregarded the same; that at the time of the pretended authorization of said lease the petitioner Tampa Suburban Railroad Company had merely a nominal existence, all of its property having been leased some years before to the Consumers' Electric Light and Street Railroad Company for the term of ninety-nine years.

Said Central Trust Company further alleges that suit has been brought to foreclose the mortgage of said Tampa Suburban Railroad Company, securing \$50,000 of bonds, by reason of default made in payment of interest upon said mortgage January 1, 1896, July 1, 1896, January 1, 1897, and July 1, 1897, which has continued until the present time, and that in said suit said Chester W. Chapin has also been appointed Receiver of the mortgaged property, and as such Receiver has taken into his possession and under his control substantially all the street railroad and appurtenant property covered by the mortgage of said Consumers' Electric Light and Street Railroad Company to said Central Trust Company of New York.

Further answering the allegations of Article VIII. of said petition, it admits that said Chester W. Chapin duly filed his bond as Receiver and took possession of the mortgaged property, and is still in possession of and operating the same, and receiving the revenues thereof, but denies that this is contrary to any rights of petitioner. It admits that petitioner has filed in the Circuit Court of the United States for the Southern District of Florida motions to discharge, annul and set aside the orders made by Judge PARDEE, and alleges that such motions have never been brought on for argument, but denies that said motions have remained undisposed of because there

is no United States Judge within said Fifth Judicial Circuit who has authority to hear and determine the same, and alleges on the contrary that for a month past there have been Judges present within said Fifth Judicial Circuit having authority to hear and determine said motions.

Said Central Trust Company further alleges that no appeal has been taken from said orders or either of them.

VI.

Said Central Trust Company denies the allegation of Article IX. of said petition that all the said proceedings and holdings in said cause in said Circuit Court will more fully and at length appear in the certified record filed with said petition, and shows that the exhibits filed with said petition consist of a wholly inadequate transcript of the record, showing merely such parts thereof as petitioners deem to be favorable to their contention, and omitting entirely the most material parts of said record, upon which Judge PARDEE acted in making the orders mentioned.

Said Central Trust Company further alleges that the Tampa Suburban Railroad Company has no real interest in this petition, and that this application is made not in its interest, but in the interest of said E. S. Douglass and John T. Douglass; that at the time said orders were made by Judge PARDEE it was absolutely necessary that the same should be made to prevent the grossest injustice upon the owners of the property, sought to be perpetrated by said E. S. Douglass and John T. Douglass; that at the time said applications were made there was no Judge of the United States Courts within the Fifth Circuit to whom application for a Receiver might be made, and that instant action was necessary to prevent the ruin of the mortgaged property, which had already been commenced by the said E. S. Douglass and John T. Douglass by pretending to make said lease to the petitioner on or about July 15, 1897, without due action of the board of directors or notice to the parties interested, and when the real owners of the property were absent, and, therefore, would not be likely to be advised of the proceedings until after the same had been carried through; and it alleges that the order appointing said Chester W. Chapin as Receiver was made after full opportunity had been given to the petitioner to be heard, and after said petitioner had been heard most fully.

And, having answered said petition, said Central Trust Company of New York prays that the same may be dismissed.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Central Trust Company of New York.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
STATE, CITY AND COUNTY OF NEW YORK, }

E. FRANCIS HYDE, being duly sworn, says that he is an officer—to wit, second vice-president—of the Central Trust Company of New York, named in the foregoing answer; that he has read the said answer, and that the matters and things therein stated are true, to the best of his knowledge, information and belief.

E. FRANCIS HYDE.

Sworn to and subscribed before me this 24th day of }
November, 1897.

WM. F. JUDSON,

[SEAL.]

Notary Public,

Westchester County,

Certificate filed in N. Y. Co.



Supreme Court of the United States.

OCTOBER TERM, 1897.

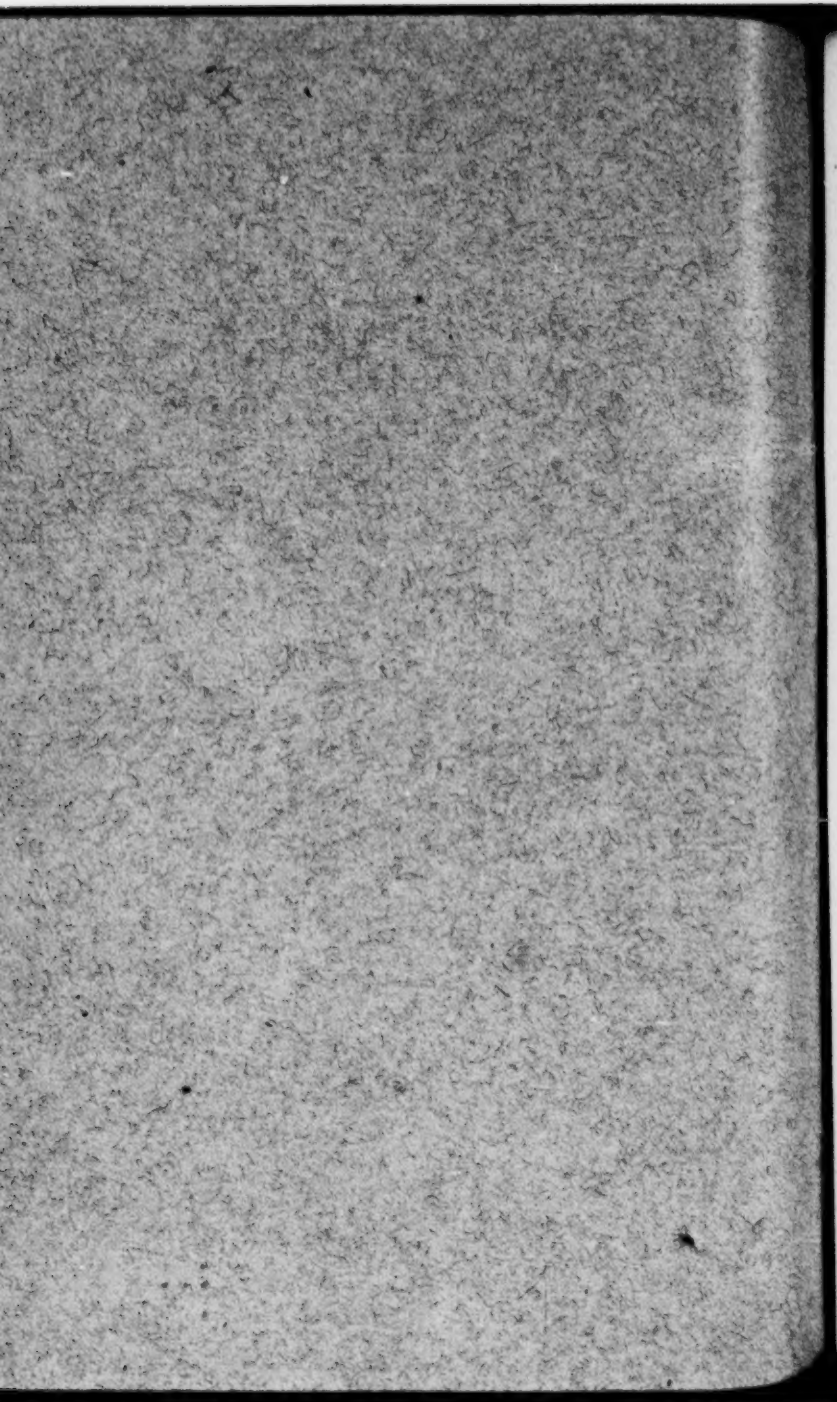
No. .—ORIGINAL.

TAMPA SUBURBAN RAILROAD COMPANY, a corporation,
Petitioner,
vs.

CENTRAL TRUST COMPANY OF NEW YORK, a corporation,
Respondent.

Brief for Central Trust Company of New York
in Opposition to Application for
Writ of Certiorari.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel.



Supreme Court of the United States.

OCTOBER TERM, 1897.

TAMPA SUBURBAN RAILROAD COMPANY, a
corporation,

Petitioner,

vs.

CENTRAL TRUST COMPANY OF NEW YORK,
a corporation,

Respondent.

No. Original.

Brief for Central Trust Company of New York in Opposition to Application for Writ of Cer- tiorari.

The order to show cause being directed to the Circuit Court, counsel for the Central Trust Company of New York, with the consent of the Circuit Judge, request that the response of the Trust Company may be considered as if it were the return of the Circuit Judge to the order.

On or about July 1, 1895, The Consumers' Electric Light and Street Railroad Company, of Tampa, made a mortgage to the Central Trust Company of New York to secure an issue of bonds amounting to \$350,000, all of which are outstanding. This mortgage covers all the property of the Consumers' Electric Light and Street Railroad Company, including all its street railways, franchises and leases, and, among others, all its rights under a lease from the Tampa Suburban Railroad Company covering all the property of this last-named company (See Record).

On July 1, 1897, default was made in the payment of interest then due on the bonds secured by said mortgage, and thereupon the Central Trust Company of New York prepared its bill of complaint for the foreclosure of said mortgage in the usual form, and made parties defendant the mortgagor, the Consumers' Electric Light and Street Railroad Company of Tampa, and also the Tampa Suburban Railroad Company, the latter company claiming some interest in the property covered by the mortgage under a pretended lease claimed to have been made July 15, 1897, after the default in payment of interest above mentioned had occurred (See Record).

The bill of complaint was verified July 21, 1897, and at that time the District Judge for the Southern District of Florida was absent in Maine, Circuit Judge McCORMICK was absent from the Circuit and in North Carolina, Justice WHITE, of the Supreme Court, was absent in Maine, and Circuit Judge PARDEE was at Wadsworth, Ohio (See Record, Affidavit of Knight. Also Answer to Petition, p. 6). The circumstances of the case were such that it was imperative for the protection of the interests of the bondholders that a Receiver should be appointed immediately, and accordingly counsel for the Central Trust Company appeared before Judge PARDEE at Wadsworth, Ohio, and presented to him the original bill and exhibit, and asked for the appointment of a receiver, and at the same time the president of both defendant corporations appeared and consented to such appointment. Judge PARDEE thereupon granted an order taking jurisdiction of the cause, and directing that cause be shown at Tampa, August 4, 1897, why a receiver should not be appointed, and in the meantime restraining the defendants from interfering with or disposing of the mortgaged property. This order was made July 22, 1897, and entered as of that day (See Record).

This order was served on the defendants, but was disregarded by the officers of the Tampa Suburban Railroad Company, who claimed to hold the property under a pretended lease authorized at a wholly irregular and ineffective alleged meeting of the board of directors, and already set aside when the order of July 22 was served. It became evident that there would be no Judge within the district or the circuit at the time the order to show cause was returnable, the restraining order was wholly disregarded, and therefore on July 27, 1897, notice of motion for a receiver was served returnable before Judge PARDEE at Wadsworth, Ohio, on August 2d (See Record. Also Answer to Petition, pp. 3 and 5).

On August 2d counsel for the Central Trust Company, The Consumers' Electric Light and Street Railroad Company and The Tampa Suburban Railroad Company appeared before Judge PARDEE at Wadsworth. An amendment and supplement to the bill of complaint was presented to Judge PARDEE together with a number of affidavits and proofs both on behalf of the complainant and the defendant Tampa Suburban Railroad Company; argument was had, and an order was granted August 3, 1897, appointing Chester W. Chapin Receiver of the mortgaged property. The Consumers' Company, the mortgagor, consented to the appointment.

No appeal has been taken from either of the orders of Judge PARDEE. The defendants have filed answers to the bill. The defendant Tampa Suburban Railroad Company has filed motions to set aside the temporary restraining order of July 22, 1897, and the order appointing receiver of August 3, 1897, but neither of these motions has been brought on for argument (Answer to Petition, pp. 5 and 6).

Since the making of the order above mentioned appointing Chester W. Chapin Receiver of the mortgaged property of the Consumers' Electric Light and Street Railway Company suit has been brought in the Circuit Court of the United States for the Southern District of Florida by the trustees of a mortgage of the Tampa Suburban Railroad Company, securing \$50,000 of bonds and covering all the property of that company, and made in 1892, some years prior to the lease from the Tampa Suburban Railroad Company to the Consumers' Electric Light and Street Railroad Company. This last-mentioned suit is brought to foreclose the mortgage of the Tampa Suburban Railroad Company because of default in payment of interest continued since January 1, 1896; and in this suit Chester W. Chapin has also been appointed Receiver, and under such appointment he holds all the property of the Tampa Suburban Railroad Company, which comprises almost all the property covered by the mortgage of the Consumers' Electric Light and Street Railroad Company to the Central Trust Company of New York (Answer to Petition, p. 5).

POINTS.

I.

THE SUPREME COURT HAS NO JURISDICTION TO ENTERTAIN THE APPLICATION.

By this application it is sought to review two interlocutory orders of the United States Circuit Court, made in a suit still pending in said Circuit Court. The Circuit Court of Appeals Act of 1891, provides that in any case that is by the act made final in the Circuit Court of Appeals, the Supreme Court may require such case, by *certiorari*, to be sent to it for its review and determination. But this applies only to cases pending in the Circuit Court of Appeals.

Forsyth vs. Hammond, 166 U. S., 506, 513.

The Supreme Court has only such appellate jurisdiction as is given to it by the acts of Congress, and the appellate jurisdiction so given to it is limited to final judgments at law and final decrees in equity or admiralty. The Supreme Court has no power to review interlocutory orders unless in connection with the review of a final decree.

Hentig vs. Page, 102 U. S., 219.

Keystone Iron Co. vs. Martin, 132 U. S., 91.

American Construction Co. vs. Jacksonville Railway, 148 U. S., 372, 378.

McLish vs. Roff, 141 U. S., 661.

Whether there be power to review interlocutory orders by *certiorari* or otherwise after an appeal has been taken to the Circuit Court of Appeals and the cause is pending therein, it is not now necessary to consider.

By Section 716 of the Revised Statutes the Supreme Court has power to issue all writs not specifically provided for by statute which may be necessary for the exercise of its jurisdiction and agreeable to the usages and principles of law, and this has been held to include the issuing of the writ of *certiorari*. But the power here given to issue this writ does not include the power to issue it in cases where such issue would be, in effect, but giving an appeal from an interlocutory order, while the whole theory of the Congressional legislation is that no appeal shall lie to the Supreme Court from

such orders. The writ is never used like a writ of error to review the judgment of an inferior court, but only in aid of other methods of review provided by law.

American Construction Co. vs. Jacksonville Railway,
148 U. S., 372, 380, and cases there cited.

The principle is the same as that which has been specifically decided in the case of *mandamus* to bring up for review a ruling or interlocutory order made in the progress of a cause, and the language of Chief-Justice MARSHALL in

Bank of Columbia vs. Sweeney, 1 Peters, 567, 569,

where it was decided that the Supreme Court would not review an interlocutory order by *mandamus*, applies well to an attempt to review such an order by *certiorari*.

The Circuit Court of Appeals Act of 1891 contains a provision in Section 7 that in an equity cause an appeal may be had to the Circuit Court of Appeals from an interlocutory order or decree granting or continuing an injunction in a cause in which an appeal from a final decree may be taken under the provision of that act to the Circuit Court of Appeals. This is the only provision for appeals in the Federal courts from interlocutory orders.

This suit is one in which an appeal from a final decree might be taken to the Circuit Court of Appeals. Though it is claimed that the question of the jurisdiction of the Circuit Court is involved, that would not prevent an appeal to the Circuit Court of Appeals from a final decree. Upon such appeal the Circuit Court of Appeals might certify the question of jurisdiction to the Supreme Court.

U. S. vs. Jahn, 155 U. S., 109.

This is therefore a case in which an appeal might have been taken to the Circuit Court of Appeals from the interlocutory orders granting and continuing the injunction in aid of the receivership, and thus there is an express provision of law for the review of these interlocutory orders by appeal. In such a case the Supreme Court will not issue a writ of *certiorari* to review the judgment of an inferior tribunal, another method of review being provided by law.

The writ of *certiorari* is asked in this case not as an aid to any appellate jurisdiction of the Supreme Court. The appellate jurisdiction given to that Court by the Circuit Court of Appeals Act in

cases mentioned in Section 5 can be invoked only in the case of final judgments.

McLish vs. Roff, 141 U. S., 661, 665.

The Supreme Court has original jurisdiction under the Acts of Congress only in certain causes of a public nature arising under the Constitution or treaties, or affecting ambassadors, or in controversies between States. This suit is not one in which the original jurisdiction of the Court may be invoked, for it does not come within the cases specified in the Constitution and the Acts of Congress.

Ex parte Vallandigham, 1 Wallace, 243.

The question involved in this case is not one of jurisdiction of the Circuit Court. There is no doubt of the power of that court to make the orders sought to be reviewed. At most, the question sought to be reviewed is an irregularity in practice, and the case will not fall within Section 5 of the Circuit Court of Appeals Act, providing for direct appeal to the Supreme Court in cases where the jurisdiction of the Court below is in issue. No request has been made in this case that the question of jurisdiction should be certified by the Circuit Court to the Supreme Court.

It is contended that the decision of this Court *in re Chetwood*, Petitioner, 165 U. S., 443, is an authority for the issue of the writ in this case; but in that case the writ was issued to bring up for review certain decrees which were in effect final decrees, and the orders permitted to be reviewed were orders of the Circuit Court interfering with the progress of a cause then pending in the Supreme Court. Manifestly, in a cause so pending, the Supreme Court alone can make orders affecting the cause, and it would not have been competent for the Circuit Court of Appeals, any more than for the Circuit Court, to interfere with the progress of the cause in the Supreme Court.

II.

IF IT BE ASSUMED THAT THE SUPREME COURT HAS JURISDICTION TO ENTERTAIN THIS APPLICATION, THE CASE IS NOT ONE IN WHICH A WRIT OF CERTIORARI SHOULD BE GRANTED.

The writ has not been issued freely by the Supreme Court, and that Court has said that under the Circuit Court of Appeals Act of 1891, allowing the Circuit Court of Appeals to certify questions to it for instruction, and allowing it to require cases pending in the Circuit Court of Appeals to be certified to it for its decision, only questions of gravity and importance should be brought before it.

Lau Ow Bew, Petitioner, 141 U. S., 583, 587.

The writ of *certiorari* to the Circuit Court of Appeals is used only to bring up questions of grave national importance, and cases in which there has been a conflict of opinion between different courts of equal rank.

Forsyth vs. Hammond, 166 U. S., 506, 514.

The writ to the Circuit Court of Appeals has been denied in cases where, there being only a matter of private interest, there has been no final judgment in the Court of Appeals.

Chicago & Northwestern Railway vs. Osborn, 146 U. S., 354; cited in Forsyth vs. Hammond, *supra*.

Still less, then, will the Supreme Court exercise the extraordinary power of taking up by *certiorari*, for review in the Supreme Court, an interlocutory order of the Circuit Court, from which no appeal has ever been taken to the Circuit Court of Appeals.

The petition for the writ and the brief of the petitioner do not set forth any matters of national importance, or any matters upon which there has been a conflict of decision in the courts below.

The first question sought to be raised is as to the power of Judge PARDEE to make the orders while out of his Circuit. The making of an order when out of the Circuit at most would be an irregularity, and the question of the appointment of the Receiver would be brought up again in the Circuit Court and the action reviewed. There has never been any conflict of decision

in the Circuit Courts of Appeal on this point, nor is it a question of any importance in this case. This case, as we shall see, was one of the plainest cases for the appointment of a Receiver, and the question who should be appointed remains within the jurisdiction of the Circuit Court. It was said by this Court, in the case of *American Construction Co. vs. Jacksonville Railway Co.*, 148 U. S., 372, 386, that the question had no material bearing upon that case, and the same is true in the case which we are considering.

The second point sought to be made is that the mortgage in question was not executed according to the laws of Florida, the ground assigned being that the seal is missing. This, as it appears from the answer to the petition, is untrue, though by an error in the copy of the exhibit filed with the bill the copy did not show that the original instrument bore the seal of the Consumers' Electric Light and Street Railroad Company (*Answer to Petition*, p. 2). But if the seal were absent and there were irregularities in the execution of the mortgage, it would be wholly immaterial, for the petitioner had full knowledge and notice of the existence of the mortgage, and recognized it in the pretended lease of July 15, 1897, and the mortgage was executed by E. S. Douglass and John T. Douglass, officers not only of the Consumers' Electric Light and Street Railroad Company, but of the petitioner The Tampa Suburban Railroad Company, and who, as alleged in the answer to the petition, are the real parties prosecuting the application for this writ.

The third point is, in effect, that the mortgage could not be foreclosed for sixty days. There is such a uniform current of decision, not only in this Court, but in all the Circuit Courts, showing that this mortgage could be foreclosed at once upon default in payment of interest, that we are surprised the point should be urged. It is sufficient to call attention to the provisions of Article First of the mortgage, giving the mortgagor possession only until default, and to the fact that there is nothing in the mortgage which takes away the right of the mortgagee, inherent in every mortgage, to foreclose by suit at once upon default in payment of interest or upon breach of condition. The effect of Article Eighth is only to give power to the holders of one-quarter in amount of the bonds to compel the trustee to foreclose after sixty days' default, and that article expressly provides that the rights particularly specified in the mortgage are cumulative to all other remedies allowed by law.

Morgan's Co. vs. Texas Central R. R. Co., 137 U. S., 171, 192.

Mercantile Trust Co. vs. Mo., Kans. & Tex. R. R. Co, 36
Federal Rep., 221.

In any event, if sixty days of grace were allowed before foreclosure could be begun, such a privilege might be, and was, waived by the Consumers' Electric Light and Street Railroad Company, the debtor, it being a personal privilege to it.

Guaranty Trust Co. vs. Green Cove Springs Co., 139
U. S., 137, 143.

The fourth point it is hardly necessary to notice, for it appears from the record that all the papers used upon the application were before the Judge, except the original bill, and that all parties had copies of this. The original bill was submitted to the Judge when the temporary restraining order was granted (See *Record*, also *Answer to Petition*, p 3). The entire record was before the Court and all the counsel, and abundant opportunity was given to examine it.

The fifth, sixth and seventh points are of no importance upon this application. They contain misstatements of fact. It is a matter of discretion with the Judge hearing such an application to allow affidavits and proofs to be filed at the time of the hearing, and full opportunity was given to examine and reply to all affidavits and proofs submitted by the complainants. Nothing was done by the first order granted except to restrain interference with the property over which the Court had taken jurisdiction until the hearing of the application for a receiver. That was all that order purported to accomplish, and it did not accomplish even this, because the petitioners disregarded it. There was the fullest proof submitted that the case was one of danger of irreparable damage by any delay.

We have thus briefly commented on the points made by petitioner's counsel, but would insist that all of them are matters which, if the petitioner sought to review them, should have been reviewed by the appeal which the law provides, or by a motion in the Court which made the orders.

III.

THE ORDERS MADE BY THE CIRCUIT JUDGE WERE IN NO RESPECT AN IMPROPER EXERCISE OF HIS JUDICIAL FUNCTIONS.

Counsel for the Central Trust Company have brought before the Court upon this application the complete record of the cause. The extracts which the petitioners presented are wholly insufficient for a proper consideration of the circumstances under which the orders were granted.

The order to show cause granted by the Court upon this petition is merely to show cause why the petition should not be allowed to be filed, and perhaps it is unnecessary to go into the case as fully as we have done ; but, as petitioners have seen fit in their petition and brief to attempt to bring before this Court the merits of the case, it seems proper that this Court, upon considering the application, should have all the facts before it.

An examination of the record and the answer to the petition will show that the case was one which called most urgently for the interposition of the Court by the appointment of a Receiver. The necessity was extraordinary. There was no Judge of the United States Court in the Circuit, and it was therefore necessary to go to the Circuit Judge out of the Circuit to prevent irreparable injury to the property.

The orders of Judge PARDEE were in no sense void. They were at most subject to review, and could be reviewed by the Court sitting in the District ; and, if the case be one for the appointment of a Receiver, the Court, upon such review, can ratify and confirm the appointment.

Hervey vs. Illinois Midland R. R. Co., 28 Federal Rep., 169, 172.

The appointment of a Receiver without notice is not a jurisdictional defect, but at most ground for an application to the Court which appointed the Receiver for a review of the order of appointment. In this case, however, the appointment of the Receiver was not made without notice. The parties were represented and had full opportunity to argue the matter and to submit any proof, and did argue the matter fully and submit affidavits and proof. The preliminary order taking jurisdiction granted July 22, 1897, is fully authorized by the Revised Statutes and by the rules of the Court.

It was not made without notice, for the president of both the defendant companies was there and expressly consented. The record shows that it was wholly disregarded by the petitioner.

The cause of action and the foreclosure suit itself would be in no wise affected if the appointment of a Receiver were set aside. The facts certainly justify the appointment of a Receiver, and the Circuit Court could now at any time appoint a Receiver in the suit or ratify and confirm the present appointment, if that be deemed necessary. If there were now no receivership the Court would, upon the facts before it, certainly appoint a Receiver. The person appointed was an eminently proper person to be Receiver. The circumstances of the case are unusual in that one man is almost the sole creditor of the company, holds substantially all the bonds of the company, and all the bonds of the petitioner company, the greater part of the stock of both companies, and has contributed all the money which has gone into the enterprise. The petitioner here has no interest in the property. If the nominal petitioner, The Tampa Suburban Railroad Company, be deemed to be the party making this application, it has no real interest in the property. It is a corporation with a merely nominal existence, which has been leased to the Consumers' Electric Light and Street Railroad Company for ninety-nine years, and all of its property had been for some years delivered over to the Consumers' Company. The pretended lease of July 15, 1897, which was attempted to be made without notice to the real owners of the property, and while they were absent, was evidently a nullity, and in itself such an extraordinary attempt to get the property away from its real owners as would justify the intervention of a court of equity; but the real parties in interest upon this application are E. S. Douglass and John T. Douglass, and not the Tampa Suburban Railroad Company, and E. S. Douglass and John T. Douglass are, as shown by the record, the persons who are really responsible for the insolvency of the defendant companies, and who were for this reason deposed from the management by the owners of the property in January last, although they were, until the receivership, still directors and employees of the companies.

As we have shown, it is not in any way material whether Judge PARDEE'S order was invalid, for the reason that it was made by him outside of his circuit. But we submit that it was not invalid, and that he had full power to make the order.

In the case of *American Construction Co. vs. Jacksonville Railroad Co.*, above cited, it was suggested that a somewhat similar question there raised was of interest and importance, though not material; but that question differed from this because it was claimed that at the time Judge PARDEE made the order out of the circuit, the Circuit Court was in session in the district where the suit was pending. That question is a very different one from the one which we are considering. No court was pending in the district when these orders were made; no Judge was in the district or in the circuit. Petitioner's counsel contend that the decision of Mr. Justice BRADLEY in *Searles vs. Jacksonville, P. & M. R. R. Co.*, 2 Woods, 621, is to the effect that a Circuit Judge cannot make an order while out of his circuit. We do not so understand the decision. That question was not before Mr. Justice BRADLEY. He was considering the construction of the Act of 1872, relating to the hearing of cases outside of the circuit by the Circuit Justice of the circuit. By the Act of 1872 the Circuit Justices were prevented from so hearing cases except under certain circumstances. Nowhere in the statutes or the rules is the power to make an order while out of the circuit taken away from the Circuit Judges. By Section 607 of the Revised Statutes the Circuit Judge is given all the powers and jurisdiction of the Circuit Justice in the circuit. This in itself would give the Circuit Judge power to hear outside of the circuit applications which may be heard at Chambers and when the Court is not in session, and these applications which we are considering were applications which may be so heard. The purpose of the Act of 1872 undoubtedly was to relieve the Circuit Justices from the labor of being asked to hear applications, when there were Judges in the district or circuit who might hear them. The language of Judge BRADLEY may have been broader than the circumstances of the case required, but it is in no sense an adjudication that the Circuit Judge cannot hear applications of this nature out of his circuit.

It is imperative to the administration of justice in the Federal Courts that he should be allowed to hear such applications. The magnitude of the questions presented to the Federal Courts has changed since 1873. A very large part of the litigation before these Courts relates to the administration of vast railway systems, the interests involved are enormous, and the litigation is the most important litigation which is conducted in this country. Action in such litigation it is often necessary to

take without the slightest delay, and if it were necessary to wait until the return of Judges from vacation it would be impossible to administer justice in suits of this character. In such litigations counsel are constantly compelled to travel great distances to attend before the Courts, and it is no hardship to request attendance outside of the circuit in cases such as this one, where for a period of many weeks or months there is no Judge within the circuit competent to act. Orders of this character are constantly made without the Circuit upon appearance and consent of parties, and it is evident, that the power to make such orders out of the Circuit exists. Whether they should be so made is at most a question of expediency, and we submit that any regulations tending to prohibit the submission of questions which may properly be heard by a Circuit Judge out of term time and at Chambers to such Judge when out of the Circuit, would seriously hamper the administration of justice in the Federal Courts. The taking into possession of property by a Court through its Receiver is subject to review by the same Court at any time, or by the Circuit Court of Appeals, and this is a sufficient check upon the granting of these orders improvidently.

IV.

The discussion in this brief of the questions involved in the case has been more extended than is required by the order to show cause, the direction of which is merely that cause shall be shown why the petition should not be allowed to be filed. Whether the writ should issue after the petition is filed is another question, but in the petition and the petitioner's brief that question has been discussed at length. It has therefore seemed necessary that counsel for the Central Trust Company should touch upon this question, and that the Court should have before it in considering the matter all the proceedings which were before Judge PARDEE, as well as such other facts as are shown by the answer to the petition.

Leave to file the petition should not be granted, and the writ of *certiorari* should not issue.

If, however, the Court sees fit to go into the whole record and the merits of the case, we feel confident that the Court will not dis-

turb the action of Judge PARDEE in granting the orders sought to be reviewed.

V.

THE APPLICATION SHOULD BE IN ALL RESPECTS DENIED.

ADRIAN H. JOLINE,
HENRY W. CALHOUN,
Of Counsel for the Central Trust Company, Respondent.

In re TAMPA SUBURBAN RAILROAD COMPANY.

ORIGINAL.

No number. Argued November 29, 1897. — Decided December 20, 1897.

A writ of certiorari, such as is asked for in this case, will be refused when there is a plain and adequate remedy, by appeal or otherwise.

Where, as in this case, an order is made by a Circuit Court, appointing a receiver, and granting an injunction against interfering with his management of the property confided to him, an appeal may be taken to the Circuit Court of Appeals, carrying up the entire order.

By denying the application in this case for a certiorari, the Court must not be understood as intimating an opinion that a Circuit Judge has power to grant injunctions, appoint receivers, or enter orders or decrees, *in invitum*, outside of his circuit.

THE Consumers Electric Light and Street Railroad Company of Tampa executed a mortgage to the Central Trust Company of New York, July 1, 1895, to secure an issue of bonds amounting to \$350,000 upon all the property of the company, including its street railways, franchises and leases, and, among other things, all its rights under a lease from the Tampa Suburban Railroad Company, made or to be made, and covering all the property of the latter.

On July 22, 1897, the Trust Company presented its bill of complaint against the Consumers and Suburban Companies for the foreclosure of its mortgage on an alleged default in the payment of interest due July 1, 1897, to one of the Circuit

Statement of the Case.

Judges for the Fifth Judicial Circuit, at the town of Wadsworth, in the State of Ohio, and made application thereon for the appointment of a receiver. It was admitted that this application was made *ex parte*, but claimed that one Chapin, president of the companies, consented thereto. The Circuit Judge thereupon, on that day, granted an order taking jurisdiction; directing that cause be shown at Tampa, in the State of Florida, August 4, 1897, why a receiver should not be appointed; and in the meantime restraining defendants from interfering with or disposing of the mortgaged property. This order was transmitted to be entered as of July 22, 1897, in the Circuit Court for the Southern District of Florida, and was so entered, and the bill filed as of that date. Notice was then given to defendants that, on the bill of complaint and the affidavit of Chester W. Chapin, complainant would apply to said Judge of the Circuit Court "at his chambers at Wadsworth, Medina County, Ohio, on the third day of August, 1897, for an order appointing a temporary receiver." On that day counsel for the Trust Company and counsel for defendants appeared before the Circuit Judge at Wadsworth, Ohio; but counsel for the Suburban Company objected to the jurisdiction and authority of the Circuit Judge to make or enter any order or decree outside the territorial limits of the Fifth Judicial Circuit of the United States, in which the suit was pending. These objections were overruled and an amendment and supplement to the bill of complaint were then presented to the Circuit Judge, together with a number of affidavits on behalf of complainant, to which the Suburban Company objected, on various grounds, which objections were overruled. Thereupon the Suburban Company filed an answer to the original bill of complaint and certain affidavits and documents. Argument was then had and an order signed by the Circuit Judge at Wadsworth, Ohio, on the third day of August, 1897, which, after appointing Chester W. Chapin receiver, and directing him to take immediate possession "of all and singular the property above described, wherever situated and found, and to continue the operation of the railway and plant of the defendant companies and conduct systematically their business

Statement of the Case.

in the same manner as at present, and discharge all the public duties obligatory upon the defendants or either of them;" thus continued:

"Each and every of the officers, directors, agents, and employes of the said defendants or either of them are hereby required and commanded forthwith, upon demand of the said receiver or his duly authorized agent, to turn over and deliver to the said receiver or his duly constituted representative all the property of the defendant companies above mentioned, and all books of accounts, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, and other property in his or their hands or under his or their control, and each and every of such directors, officers, agents, and employes are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by said receiver or his duly constituted representative in conducting the operation of the said property and in discharging his duty as receiver, and each and every of such officers, directors, agents, and employes of the defendant companies or either of them are hereby enjoined from interfering in any manner whatever with the possession or management of any part of the property over which the receiver is hereby appointed, or from interfering in any way to prevent the discharge of the duties of such receiver."

The receiver was then authorized by the order to operate the street railway system and other property, with the usual provisions in that regard, being required to give bond to be approved by the clerk of the court or by a judge thereof, conditioned for the proper discharge of his duties. The order concluded: "And it is further ordered that the original and supplemental bills in this cause, and all exhibits, affidavits and other papers filed therein, be transferred to and filed in the clerk's office, at Tampa, Florida, at which place all process shall be returnable."

This order was transmitted by the Circuit Judge by letter from Wadsworth, Ohio, under date August 4, 1897, to the clerk of the Circuit Court at Jacksonville, with directions to file it, which letter informed the clerk that the Circuit Judge

Statement of the Case.

had sent by express to him "supplemental bill and numerous affidavits offered by counsel, which, on receipt, also file, of same date as order appointing receiver. Attached to the order appointing receiver I have appended an order directing the original bill and all the affidavits and exhibits filed to be transferred to the clerk's office at Tampa."

The Tampa Suburban Railroad Company presented its petition to this court for a writ of certiorari directed to the Circuit Court for the Southern District of Florida to remove the proceedings in question for review, and on the application to file the petition, a rule to show cause was granted, to which return has been made.

The petition set forth in detail the matters above stated, in brief, with others, and insisted that the orders made by the Circuit Judge in the State of Ohio were void for want of jurisdiction; that the mortgage of the Consumers Company was invalid for not having been properly executed, as required by the statutes of Florida; that foreclosure was prematurely sought because the default in the payment of interest had not been continued for sixty days, contended to be a condition provided in the mortgage; that the original bill and exhibits were not before the Circuit Judge when the order of August third was granted; that the Circuit Judge improperly considered the amended bill and accompanying affidavits when notice thereof had not been given; that the restraining order was not limited in duration; and that there was no proof of danger of irreparable damage by delay. It was admitted that on the 22d of July and until and long after the 3d of August, the District Judge for the Southern District of Florida and both Circuit Judges and the Circuit Justice were absent from the Fifth Judicial Circuit, and petitioner charged that it had filed in the Circuit Court for the Southern District of Florida motions to discharge, annul and set aside the orders of July twenty-second and August third; but that the motions had remained undisposed of up to October ninth, when the petition was verified, because there was no judge of the United States courts within that circuit who had authority to hear and determine the same.

Opinion of the Court.

Mr. Noah Brooks Kent Pettingill for petitioner. *Mr. Thomas Mitchell Shackelford* was on his brief.

Mr. Adrian H. Joline opposing. *Mr. Henry W. Calhoun* was on his brief.

MR. CHIEF JUSTICE FULLER, after stating the case, delivered the opinion of the court.

By section 716 of the Revised Statutes it is provided that : "The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." This undoubtedly authorized the issue of writs of certiorari in all proper cases. *American Construction Co. v. Jacksonville, Tampa &c. Railway*, 148 U. S. 372, 380.

In the case of *In re Chetwood*, 165 U. S. 443, 461, we allowed the writ to bring up for review certain final orders of the Circuit Court, which interfered with causes pending in this court ; and the question of the issue of the writ by this court in the exercise of its inherent general powers, under the Constitution, did not arise.

By this application the review of two interlocutory orders is sought, the one, a preliminary restraining order, and the other appointing a receiver and continuing the injunction in aid of the receivership, on the ground that both these orders were void for want of power in the Circuit Judge to grant them outside of his circuit.

That this presents a question of grave importance is obvious, but it is objected that the application cannot be entertained because the appellate jurisdiction of this court can only be exercised in respect of final judgments or decrees, and, also, because there is another adequate remedy. We need not consider the first of these objections, as the second is sufficient to dispose of the application.

When sought as between private persons, the general rule

Opinion of the Court.

is that the writ of certiorari, such as asked here, will be granted or denied, in the sound discretion of the court, on special cause or ground shown; and will be refused where there is a plain and equally adequate remedy by appeal or otherwise.

By the seventh section of the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, 828, as amended by the act of February 18, 1895, c. 96, 28 Stat. 666, it is provided: "That where, upon a hearing in equity, in a District Court or a Circuit Court, an injunction shall be granted, continued, refused or dissolved by an interlocutory order or decree or an application to dissolve an injunction shall be refused in a case in which an appeal from a final decree may be taken under the provisions of this act to the Circuit Court of Appeals, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving or refusing to dissolve an injunction to the Circuit Court of Appeals."

The suit in which the orders complained of were entered is one in which an appeal from a final decree might be taken to the Circuit Court of Appeals, and this even though the question of the jurisdiction of the Circuit Court was involved. *United States v. Jahn*, 155 U. S. 109. An appeal to the Circuit Court of Appeals might, therefore, have been taken from these orders or from an order refusing to set them aside and dissolve the injunction. We are not called on to say that an appeal would lie from an order simply appointing a receiver, but where the order also grants an injunction, the appeal provided for may be taken, and carries up the entire order, and the case may, indeed, on occasion, be considered and decided on its merits. *Smith v. Vulcan Iron Works*, 165 U. S. 518.

The application for leave to file this petition must, therefore, be denied; but we must not be understood as intimating an opinion that a Circuit Judge has power to grant injunctions, appoint receivers or enter orders or decrees, *in invitum*, outside of his circuit.

Leave denied.